

CHAPTER 2

Code of Procedure for Mayor's Court

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Section 2.1 Short title

This chapter may be cited as the "Code of Procedure for Mayor's Court".

Section 2.1.1 Definitions

Except where the context clearly indicates otherwise, as used in this code:

- (1) "Act" includes a failure or omission to perform a legal duty.
- (2) "Convicted" means adjudicated guilty after a plea or after trial.
- (3) "Defendant" means a person who has been charged with or accused of an offense.
- (4) "Information" includes affidavit.
- (5) "Institution of prosecution" means the filing of an information or affidavit which is designed to serve as the basis of a trial.
- (6) "Oath" includes affirmation.
- (7) "Ordinance" means an ordinance of this municipality.

- (8) "Offense" means any violation of an ordinance providing a penalty of fine, imprisonment, or both, subject to the jurisdiction of the court.
- (9) "Person" includes an individual, partnership, unincorporated association of individuals, joint stock company, or corporation.
- (10) "Trial" means trial on the merits, that is, trial on the issue of guilt or innocence.

Section 2.1.2 Computation of time

(a) In computing a period of time allowed or prescribed by this code or by order of the court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday by law, in which event the period runs until the end of the next day which is not a legal holiday by law.

(b) A half-holiday is considered a legal holiday.

(c) A legal holiday by law is to be included in the computation of a period of time allowed or prescribed, except when either:

- (1) It is expressly excluded.
- (2) It would otherwise be the last day of the period.
- (3) The period is less than seven days.

Section 2.2 Court continued; jurisdiction and powers

(a) The mayor's court is continued as established by law, subject to this code or other ordinance.

(b) The court has the jurisdiction and powers that are conferred upon it by law, except as modified by this code or other ordinance.

(c) The court has jurisdiction over all offenses and complaints arising under the code.

(d) The court shall possess all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders. The court may punish for contempt and may issue subpoenas and arrest warrants.

(e) The judge of the court shall be the mayor, or in his absence, the mayor pro tem or a magistrate ad hoc designated by the mayor.

(f) Where no procedure is specifically prescribed by law, this code, or other ordinance, the court may proceed in a manner consistent therewith in the interest of justice.

Section 2.3 Docket to be kept

The judge shall cause to be kept:

- (1) A regular court docket, on which shall be entered the causes arising under the code and to be tried.
- (2) A perfect record of all cases tried.

Section 2.4 Adoption of rules

The court may adopt rules for the conduct of proceedings before it, not in conflict with law, this code, or other ordinance.

Section 2.5 Sessions of court

- (a) The court may be convened at any reasonable time as the judge may determine.
- (b) The court may call a special session at any time and any proceeding or prosecution may be tried or heard during the special session.

Section 2.6 Duties of chief of police

The chief of police shall attend court, serve its process, and acts as its executive officer. He shall perform such other official actions as may be required.

Section 2.7 Court costs

- (a) Thirty dollars (\$30.00) may be assessed as court cost against any person convicted of any offense, which assessment shall be in addition to any fine and punishment imposed for the infraction.
- (b) Court cost shall be collected according to law.
- (c) Upon a showing to the satisfaction of the court that a person is indigent, or that the payment of the fine or court cost, in whole or in part, would cause undue hardship upon a person, the court may allow a person to perform community service at a rate of ten dollars (\$10.00) per hour to satisfy any monetary obligation owed. (Ordinance No. 3 of 2001)

Section 2.8 Procedure for punishing contempt of court

A person who has committed a contempt of court may be found guilty and punished therefore by the court without a trial, after affording him an opportunity to be heard orally by way of defense or mitigation.

Section 2.9 Disposal of unclaimed property seized in any investigation

Any unclaimed property seized in connection with any investigation under the

jurisdiction of the court, shall be disposed of as follows:

(1) Contraband shall be delivered to the district court for disposal.

(2) Noncontraband shall, if it remains unclaimed for more than six months after its use or from the time it was last used in connection with any proceeding, be disposed of by the chief of police in any lawful manner he deems proper. Any appropriate usable property shall be given to nonprofit youth facilities. Before disposal, the chief of police shall cause an advertisement to be placed in the official journal of the municipality two times within thirty days. The advertisement shall describe the property, and shall call upon the owner to present himself, prove ownership and pay the accrued storage charges, as well as the cost of advertisement.

(3) All funds derived from the disposal of property shall be deposited in the general fund of the municipality.

Section 2.11 Bail

(a) Each person charged with an offense to be tried in court shall have the right to bail.

(b) Bail shall be set in accordance with law, this code, and other ordinance, and adequate security shall be furnished as determined by the court.

(c)(1) Schedules of bail according to the offense charged may be fixed by the court.

(2) The court order setting the bail schedule shall fix the amount of bail for each offense listed, designate each officer authorized to accept bail, and order that bail be taken in conformity with the schedule. It may also contain a general provision designating the amount of bail for any offense not listed in the schedule. A copy of the schedule shall be sent to the chief of police.

(3) A bail schedule may be revised or rescinded at any time.

Section 2.12 Bond by surety company

(a) Bond by surety company may be accepted as bail only when:

(1) there is on file with the municipal police department a certified copy of the power of attorney authorizing the signing party to be the agent of the surety and indicating that the power of attorney has been filed and recorded with the parish clerk of court; and

(2) the surety company has no bond obligation to the municipality outstanding for which the principal has not appeared when ordered, the surety company and agent have been notified of the failure of the principal to appear according to law, the time for return of the principal has expired, and payment on the bond has not been made to the municipality.

(b) In executing a bond on behalf of a surety company, the agent vouches that he is the authorized representative of the surety and that the surety is authorized by law to do business

within this state. Violation of this provision by a person representing himself to be an authorized agent of a surety when he is not so authorized or acting on behalf of a surety that is not authorized by law to do business in this state shall subject the person to penalties provided in section 25.6.

Section 2.13 Deposit of money, check, bond, or money order as bail

(a) The defendant may furnish his personal undertaking, secured by a deposit with the clerk. The deposit shall consist of any of the following which are equal to the amount of the bail:

- (1) Cash.
- (2) A certified or cashier's check on any state or national bank.
- (3) Bonds of the United States government negotiable by delivery.
- (4) Bonds of the state or any political subdivision negotiable by delivery.
- (5) United States postal money order or money order issued by any state or national bank.

(b) Upon final disposition of a case in which a deposit of money, check, bonds, or money order has been made and said deposit has remained unclaimed for a period of one year from the date of the final disposition, the clerk shall deposit the same in the general fund of the municipality after advertising by publication in the official journal of the municipality of a notice to the public containing an itemized list of all of such funds on deposit, containing each name and last known address of the defendants and the docket numbers of each case involved. The publication shall be made once within thirty days after the final disposition of the case. The clerk shall also send a notice by certified mail to each said defendant at the last known address of the defendant.

Section 2.14 Substitution of security

The defendant or his surety may, at any time before a breach of the bail undertaking and with approval of the court, substitute another form of security authorized by law, this code, or other ordinance. The original security, including a surety, shall be released when the substitution is made.

(Ordinance No. 7 of 1996)

Section 2.15 Release on own bail undertaking

A person in custody may be released by order of the court on his personal bail undertaking without the necessity of furnishing security. (Ordinance No. 7 of 1996)

Section 2.16 Other conditions related to appearance of defendant

In addition to any other form of bail provided by law or ordinance, the court may impose any condition of release that is reasonably related to assuring the appearance of the defendant before the court. Violation of such condition by the defendant shall be considered as a contempt court and shall be grounds for revocation of bail. (Ordinance No. 7 of 1996)

Section 2.17 Cancellation of bail bond

The court shall order the bail bond canceled when there is no further liability thereon.

Section 2.18 Suspension of driving privileges; failure to pay criminal fines

A. When a fine is levied against a person convicted of any criminal offense or any municipal ordinance regulating traffic and the defendant is granted an extension of time to pay the fine, the judge of the court may order the driver's license to be surrendered to the official of the court collecting fines for a period of time not to exceed one hundred eighty days. If, after expiration of one hundred eighty days, the defendant has not paid the fine, the official of the court designated to collect fines shall forward the license to the Department of Public Safety and Corrections.

B. Upon receipt of a surrendered driver's license, the court official responsible for collection of such fines shall issue a temporary permit for a period not to exceed one hundred eighty days or for a period of time set forth by the judge. The temporary permits, the procedure for distributing such permits, and the rules and regulations associated with such permits shall be the same as devised by the Department of Public Safety and Corrections as required by R.S. 32:411.1.

C. If, after expiration of one hundred eighty days, the defendant has not paid the fine, the official of the court designated to collect fines shall forward the license to the Department of Public Safety and Corrections. Upon receipt of the defendant's surrendered driver's license, the department shall suspend the driver's license of the defendant. The suspension shall begin when the department receives written notification from the court, and the department shall send immediate written notification to the defendant informing him of the suspension of driving privileges.

D. The department shall not reinstate, return, reissue, or renew a driver's license in its possession pursuant to this Section until payment of the fine and any additional administrative cost, fee, or penalty required by the judge and any other cost, fee, or penalty required by the department in accordance with R.S. 32:414(H) or other applicable cost, fee, or penalty provision. (Amended by Ordinance No. 12 of 2003.)

Section 2.21 Methods of instituting prosecution

A prosecution for an offense shall be instituted by affidavit or information charging any offense supported by an affidavit.

Section 2.22 Information

Information is a written accusation of an offense made by the prosecuting attorney and signed by him. It must be filed in open court or with the clerk.

Section 2.23 Affidavit

An affidavit is a written accusation of an offense made under oath and signed by the affiant. It must be filed in open court or with the clerk.

Section 2.24 Warrant of arrest on information or affidavit

When an information or affidavit is filed against a defendant who is not in custody or at large on bail for the offense charged, the court shall issue a warrant for the defendant's arrest, unless it issues a summons.

Section 2.25 Summons

The court may issue a summons, instead of a warrant of arrest, if it has reasonable ground to believe that the person will appear in response to a summons. If the court issues a summons, it may later issue a warrant of arrest in place of the summons.

Section 2.31 Arraignment of defendant

The arraignment of the defendant consists of the reading of the information or affidavit to the defendant in open court, and the court calling upon the defendant to plead. The reading may be waived by the defendant, at the discretion and with the approval of the court. The arraignment and the defendant's plea to each charge shall be entered in the minutes of the court and shall constitute a part of the record.

Section 2.32 Pleas at arraignment

There are three kinds of pleas to the information or affidavit at arraignment:

- (1) Guilty.
- (2) Not guilty.
- (3) No contest. If the court accepts such a plea, it shall impose sentence and place the defendant on probation, or release him during his good behavior. A sentence imposed upon a plea of no contest is a conviction and may be considered as a prior conviction and provide a basis for prosecution or sentencing under ordinances pertaining to multiple offenses.

Section 2.33 Method of pleading

(a) The plea shall be made in open court and shall be immediately entered in the minutes of the court. A failure to enter a plea in the minutes shall not affect the validity of any proceeding in the case.

(b) The defendant may plead not guilty through counsel.

Section 2.34 Effect of failure to plead

If a defendant stands mute, refuses to plead, or pleads evasively, when called upon to plead, a plea of not guilty shall be entered. When a defendant is a corporation and fails to appear at arraignment when summoned, a plea of not guilty shall be entered.

Section 2.35 Waiver

Any irregularity in the arraignment is waived if the defendant pleads without objecting thereto. A failure to arraign the defendant, or the fact that he did not plead, is waived if the defendant enters upon the trial without objecting thereto, and it shall be considered as if he had pleaded not guilty.

Section 2.36 Plea of guilty of lesser included offense

The defendant, with the consent of the prosecuting attorney, may plead guilty of a lesser offense that is included in the offense charged in the information or affidavit.

Section 2.37 Withdrawal or setting aside of plea of guilty

The court may permit a plea of guilty to be withdrawn at any time before sentence.

Section 2.38 Change of plea of not guilty to guilty

A defendant may at any time withdraw a plea of not guilty and plead guilty, subject to the limitations stated in sections 2.36 and 2.37.

Section 2.41 Limitation of prosecution of offenses

No person shall be prosecuted, tried, or punished for an offense unless the prosecution is instituted within the following periods of time after the offense has been committed:

- (1) Two years, for an offense punishable by a fine or imprisonment, or both.
- (2) Six months, for an offense punishable only by a fine or forfeiture.

Section 2.42 Running of time limitations

The time limitations in section 2.41 shall not commence to run until the relationship or status involved has ceased to exist where the offense charged is based on the misappropriation of any money or thing of value by one who, by virtue of his office, employment, or fiduciary relationship, has been entrusted therewith or has control thereof.

Section 2.43 Conviction and punishment for lesser offenses

The time limitations applicable to the offense for which a person is prosecuted apply to a conviction or punishment for a lesser and included offense.

Section 2.44 Interruption of time limitations

The periods of limitation established section 2.41 shall be interrupted when the defendant, for the purpose of avoiding detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state.

Section 2.45 Filing of new charges upon dismissal of prosecution

When a prosecution is timely instituted and the prosecution is dismissed with the defendant's consent, or before the first witness is sworn at the trial, or the information dismissed for any error, defect, irregularity, or deficiency, a new prosecution for the same offense or for a lesser offense based on the same facts may be instituted within the time established by section 2.41.

Section 2.46 Dismissal fee

Prior to the dismissal of any complaint in court at the request of the person who filed the affidavit or complaint, there shall be paid by the complainant or affiant to the municipality and deposited in the general fund of the municipality, a dismissal fee of fifty dollars (\$50.00) for the expense of processing the complaint.

Section 2.51 Limitations upon trial; general rule

Except as otherwise provided in this code, no trial shall be commenced after one year from the date of institution of prosecution.

Section 2.52 Interruption of time limitations

- (a) The period of limitation established in section 2.51 shall be interrupted if:
 - (1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state.
 - (2) The defendant cannot be tried because of insanity or because his presence at trial cannot be obtained by legal process, or for any other cause beyond the control of the municipality.
 - (3) The defendant fails to appear at any proceeding pursuant to actual notice, proof of which appears of record.
- (b) The period of limitation established in section 2.51 shall commence to run anew from the date the cause of interruption no longer exists.

Section 2.53 Suspension of time limitations

When a defendant files any motion, the running of the period of limitation established by section 2.51 shall be suspended until the ruling of the court thereon; but in no case shall the municipality have less than one year after the ruling to commence trial.

Section 2.54 Expiration of limitations; motion; effect

(a) Upon the expiration of the limitations established in section 2.51, the court shall, upon the motion of the defendant, dismiss the proceeding. This right to dismissal is waived unless the motion is made prior to trial.

(b) If the proceeding is dismissed under this section, there shall be no further prosecution against the defendant for the same or a lesser offense based on the same facts.

Section 2.55 Time limitations; effect of new trial

When a defendant obtains a new trial or there is a mistrial, the municipality must commence the second trial within one year from the date the new trial is granted, or the mistrial is ordered.

Section 2.56 Continuance

Upon motion at any time, the court may grant a continuance, but only upon a showing that such motion is in the interest of justice.

Section 2.61 Issuance of subpoenas

The court shall issue subpoenas for the compulsory attendance of witnesses at hearings or trials when requested to do so by the municipality or the defendant. The clerk may issue subpoenas.

Section 2.62 Subpoena duces tecum

A subpoena may order a person to produce at trial or hearing, books, papers, documents, or any other tangible things in his possession or under his control, if a reasonably accurate description thereof is given; but the court shall vacate or modify the subpoena if it is unreasonable or oppressive.

Section 2.63 Form

A subpoena shall state the name of the court and the title of the case and shall command the attendance of a witness at a time and place specified.

Section 2.64 Service of subpoena

The chief of police shall serve the subpoena and make a return thereof without delay.

Section 2.65 Types of service

(a) Unless otherwise directed by the prosecuting attorney or the defendant, subpoenas shall served by domiciliary service, personal service, or United States mail as provided in subsection (b). Personal service is made when the officer tenders the subpoena to the witness. Domiciliary service is made when the officer leaves the subpoena at the dwelling house or usual abode of the witness with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness.

(b) Service by first class mail shall include a request that the enclosed return form be signed by the addressee and mailed to the chief of police. If a signed return is not received by the chief of police the subpoena shall be served by domiciliary or personal service.

(c) Service by mail shall be considered personal service if the certified return receipt or the return form is signed by the addressee. Service by mail shall be considered domiciliary service if the certified return receipt or the return form is signed by anyone other than the addressee.

Section 2.66 Return of subpoena by chief of police

The chief of police shall endorse on a copy of the subpoena the date, place, type of service, and sufficient other data to show service in compliance with law and this chapter. When the witness cannot be found, the chief of police must set out in his return every fact that in his opinion justifies the return. He shall sign and return the copy promptly after the service to the court. The return, when received by the clerk, shall form a part of the record and shall be considered prima facie correct.

Section 2.67 Contempt; attachment of witness failing to appear

(a) Contumacious failure to comply with a subpoena, proof of service of which appears of record, constitutes a contempt of court, and the court may order the witness attached and brought to court immediately.

(b) If an order of attachment is issued, it may be executed by the chief of police or other authorized law enforcement officer.

Section 2.71 Normal order of trial

The normal order of trial shall be as follows:

- (1) The reading of the information or affidavit.
- (2) The reading of the defendant's plea on arraignment.
- (3) The presentation of the evidence of the municipality, and of the defendant, and of the municipality in rebuttal.

- (4) The argument of the municipality, the defendant, and the municipality in rebuttal.
- (5) The announcement of the judgment.

Section 2.72 Oath of witness

Before a witness is permitted to testify he shall be sworn to tell the truth.

Section 2.73 Responsive judgments

The following judgments are responsive:

- (1) Guilty.
- (2) Guilty of a lesser and included grade of offense.
- (3) Not guilty.

Section 2.74 Presence of defendant

(a) The court may permit a defendant charged with an offense to be arraigned, plead guilty, or be tried, in his absence, if he is represented by counsel who consents to proceed.

(b) A plea of not guilty may always be entered through counsel and in the absence of the defendant.

Section 2.81 Credit for prior custody

The court, when it imposes sentence, may give a defendant credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence.

Section 2.82 Sentence of fine with imprisonment for default

If a sentence imposed includes a fine or costs, the sentence shall provide that in default of payment thereof, the defendant shall be imprisoned for a specified period not to exceed sixty days.

Section 2.83 Release on payment of fine and costs

A defendant who has been imprisoned for default of payment of a fine, or fine and costs, under a sentence imposed pursuant to section 2.82, may, at any time before expiration of the term of imprisonment, obtain his release by paying all of the costs imposed and a sum of money that bears the same proportion to the imposed fine as the term of alternate imprisonment yet to run bears to the whole of such term of imprisonment.

Section 2.84 Defendant's liability for costs; suspension of costs

A defendant who is convicted of an offense shall be liable for all costs of the prosecution up to the maximum amount established by law or ordinance when assessed by the court. However, such a defendant shall not be liable for costs if acquitted or if the prosecution is

dismissed. In addition, the judge may suspend court costs authorized or imposed by ordinance.

Section 2.85 Costs and fines; payment

Costs and any fine imposed shall be payable immediately. However, the court may grant the defendant a certain time period after rendition of judgment to pay any costs and any fine imposed.

Section 2.86 Suspension of sentence; probation

(a)(1) When a defendant has been convicted, the court may suspend the imposition or the execution of the whole or part of the sentence imposed and place the defendant on probation upon such conditions as the court may fix. Such suspension of sentence and probation shall be for a period of two years or such shorter period as the court may specify.

(2) The court may suspend, reduce, or amend a sentence after the defendant has begun to serve the sentence.

(b) Nothing contained herein shall be construed as being a basis for the destruction of records of the arrest and prosecution of any person convicted.

(c) The court may terminate the defendant's suspended sentence or probation and discharge him at any time. (Ordinance No. 7 of 1996)

Section 2.87 Conditions of probation

(a) When the court places a defendant on probation, it shall require the defendant to refrain from conduct in violation of law or ordinance and it may impose any specific conditions reasonably related to his rehabilitation.

(b) The court may require the defendant to perform a specified amount of community service work for each month he is on probation.

(c) The defendant shall be given a certificate setting forth the conditions of his probation and shall be required to agree in writing to the conditions.

(d) The court may, at any time during the probation period, modify, change, or discharge the conditions, or add further authorized conditions.

(e) When the court places a defendant on probation, it shall, as a condition of probation, order the payment of restitution in cases where the victim has suffered any actual monetary loss. The court shall order restitution in a reasonable sum not to exceed the actual pecuniary loss to the victim. The payment shall be made, in the discretion of the court, either in a lump sum or in monthly installments based on the earning capacity and assets of the defendant.

Section 2.88 Arrest or summons for violation of probation

At any time during probation or suspension of sentence, the court may issue a warrant for the arrest of the defendant for violation of any condition of probation, or may issue a summons to appear to answer to a charge of violation or threatened violation.

Section 2.91 Effect of appeal

An appeal by the defendant shall not suspend the execution of the sentence. The court may amend the sentence to grant credit for all or part of the time served pending appeal.

Section 2.92 Method and time of appeal

A motion for an appeal may be made orally in open court or by filing a written motion with the clerk. The motion must be made no later than five days after rendition of the judgment or ruling from which the appeal is taken. The motion shall be entered into the minutes of the court.