

MUNICIPAL COURT PROCESS

Your presence in Municipal Court today is perhaps your first experience in any Court. This brochure has been prepared to help you understand the Court proceedings and inform you of your rights and duties. We want every person to leave this Court feeling that he/she has been treated fairly. Municipal Court is the judicial branch of City Government and only has jurisdiction over alleged traffic violations and violations of City Ordinances that occur within the city limits; and, upon conviction, carry a maximum fine of \$2,500 and a possible jail term of up to one (1) year. Trials are conducted under the Code of Criminal Procedure, Code for Municipal Courts and the Kansas Rules of Evidence, as adopted by the Kansas Legislature.

When you appear in Court, you will be required to obey the following rules:

- 1) Your clothing must include a shirt, pants or skirt, and shoes.
- 2) The wearing of hats and caps is not allowed.
- 3) Food and drinks are not allowed in the Courtroom.
- 4) While Court is in session, talking is not allowed, except with authorized Court personnel.

FIRST APPEARANCE

Your first appearance in Municipal Court is for the purpose of arraignment to enter a plea to the charge(s). If you signed a citation in front of an officer, you did not plead guilty, but only signed a promise to appear in Court on your appearance date. Your decision on what plea to enter is the most important decision you will have to make. We suggest that you read and understand the following explanations of all three please before entering your plea.

I plea...

- 1) **Guilty** – By a plea of guilty, you admit you committed the act charged, law prohibits this act and you have no defense for your act. Before you enter your plea of guilty, you need to understand the following:
 - a) The City has the burden of proving its case against you. You have the right to hear the City's evidence, confront the City's witnesses and right to call witnesses on your behalf. If the City does not meet their burden of proof, the law does not require you to prove anything.
 - b) If you were involved in a traffic accident at the time of the alleged offense, your plea of guilty can be an admission by you that you were at fault or were the party responsible for the act and this could be used later in a civil suit for damages.
- 2) **Nolo Contendere (No Contest)** – A plea of nolo contendere, also known as no contest, means you do not wish to contest the City's charge against you. Although you are not entering an admission of guilt, you will be found guilty without a trial and sentenced. The Judge will enter a judgment and a fine amount will be set. A plea of nolo contendere cannot be used against you in a civil suit for damages.
- 3) **Not Guilty** – A plea of not guilty means you are informing the Court you deny guilt and the City must prove its charges against you. If you plead not guilty, you will need to decide whether to hire an attorney to represent you at trial. You may defend yourself, but no one else except an attorney may represent you. However, if you are a minor, under 18 years of age, your parent(s) should be present. If you defend yourself, please consult the following sections of this brochure regarding the trial procedure and the manner of presenting your case. Under our American system of justice, all persons are presumed to be innocent until proven guilty beyond a reasonable doubt. On a plea of "Not Guilty," a trial is held and the City is required to prove all the allegations against you as contained in the formal complaint "beyond a reasonable doubt," before a verdict of guilty can be reached.

RIGHT TO AN ATTORNEY

In all cases in the Municipal Court, you have the right to hire an attorney, if you desire. When you are charged with an offense that may result in jail time as part of your sentence, you will need to decide whether you want to continue with or without an attorney. If you desire an attorney, and if the Court finds you do not have the means to hire one after you have completed filling out a financial affidavit form, the Court will consider appointing an attorney for you. (You will have no choice in the selection of an attorney.) If the Court appoints an attorney to represent you, and you are found guilty or plead guilty or no contest to the charge(s), the Court can assess your attorney fees as part of the Court Costs.

WAIVER OF RIGHT TO COUNSEL

In certain cases, the Court will not allow you to enter a plea without your having an attorney or you signing a formal waiver, giving up your right to have legal counsel. You will be advised by the Judge if you are charged with one or more of these types of offenses. By signing the formal waiver, you will be stating to the Court you are freely choosing to represent yourself and you will be acting as your own attorney, you know what you are charged with, you know the

possible sentence and any defenses to the charge(s) that are not raised will be lost. You will be held to the same standards as an attorney. The Judge may not assist you in your defense.

TRIAL

Under Kansas law, you can be brought to trial only after a complaint or traffic citation has been filed and you have entered a plea of not guilty to the charge(s) against you. The complaint or citation is a document which alleges what you are charged with and your actions were unlawful. You have the right to inspect this complaint before trial and have it read to you at trial. You do not have the right to have your case tried before a jury in Municipal Court. You are entitled to hear all testimony introduced against you. You have the right to testify on your own behalf. You also have a constitutional right not to testify. If you choose not to testify, your refusal cannot and will not be used against you in determining your guilt or innocence. However, if you choose to testify, the prosecutor will have the right to cross-examine you. You may call witnesses to testify on your own behalf. You have the right to have the Court issue subpoenas for witnesses to ensure their appearance at trial. A subpoena form is located on the abilenecityhall.com website for this purpose. However, you must furnish names, addresses and telephone numbers of the witnesses to the Court as soon as possible so they may be located and the subpoenas served. (In all cases, this information must be supplied more than three (3) days before the scheduled trial date).

PRESENTING THE CASE

All those who expect to testify for the prosecution (City) are sworn in as they are called as witnesses. The prosecution has the burden of proof to show you are guilty as charged. The prosecutor will bring forward witnesses who will testify to their knowledge. The witnesses may be police officers or civilians or both. After each of the City's witnesses have answered the prosecutor's questions, you will be given the opportunity to question the witness. At this time you may only ask questions, not make statements or argue with the witness. After the prosecution has finished presenting its case you have the opportunity to:

- 1) Remain silent. Your silence will not be an admission of guilt. You are not required to prove your innocence.
- 2) Call witnesses to testify on your behalf.
- 3) Testify under oath and be questioned as any other witness. You cannot be compelled to do so. It is your choice and your silence will not be used against you.

After all of your witnesses testify, the City has the right to question you if you testify or any witnesses you call. Upon both sides resting their cases, the Judge will make a verdict.

THE VERDICT

The Judge will make a decision of guilty or not guilty based on the testimony of witnesses and on the fact presented during the trial. In making his determination, he can only consider the evidence presented and testimony of the witnesses who are under oath.

FINES

The amount of fine assessed by the Court is affected by the facts and circumstances of the case. Mitigating circumstances may lower the fine, even if you are guilty. However, aggravating circumstances may increase the fine.

RIGHT TO APPEAL

If you are not satisfied with the judgment of the Court, you have the right to appeal your case to the District Court of Dickinson County, KS. If you appeal the judgment, you must file a written Notice of Appeal, post an Appeal Bond and pay a filing fee in the Dickinson County District Court. The Appeal must be filed within 14 calendar days from date of sentencing. Your appeal will be set for a new trial before a different Judge, or Jury, in the District Court.

EXPUNGEMENT

Any defendant who is convicted, arrested or diverted of an ordinance violation may apply for an expungement of that conviction or diversion. Generally, an expungement may be filed three years or more after the defendant has fulfilled the sentence and probation that was imposed. Exceptions to this would be Driving Under the Influence, Driving While Suspended, Leave the Scene of Injury Accident and Failing to Maintain Liability Insurance. These violations cannot be expunged for five years after all sentencing and probation are completed; however, a second DUI conviction or diversion may not be filed until ten years or more.