

City of Salem

# Salem Municipal Court Trial Court Rules

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on August 1, 2015.



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Jane Aiken, Municipal Court Judge

# Salem Municipal Court Rules (SMCR)

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## **GENERAL INFORMATION REGARDING THE SALEM MUNICIPAL COURT RULES (SMCR)**

### *Governing Laws and Code Pertaining To The General Powers of Oregon Municipal Courts*

Salem Revised Code (SRC) 4.060 authorizes the Municipal Judge to adopt rules which facilitate “the prompt and orderly conduct” of court business. The Salem Municipal Court Rules are issued under that authority and are binding on all court participants.

Pursuant to Oregon Revised Statutes (ORS) 1.010, courts have seven powers to aid in the administration of Court justice and proceedings. This statute states:

Every court of justice has power:

- (1) To preserve and enforce order in its immediate presence.
- (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority.
- (3) To provide for the orderly conduct of proceedings before it or its officers.
- (4) To compel obedience to its judgments, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein.
- (5) To control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto.
- (6) To compel the attendance of persons to testify in an action, suit or proceeding pending therein, in the cases and manner provided by statute.
- (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

## **CHAPTER 1 – GENERAL PROVISIONS**

### *1.010 SCOPE OF THESE RULES*

- (1) Effective January 1, 2012, these rules apply uniformly to all proceedings in Salem Municipal Court except those proceedings and actions specified in SMCR 1.010(3) or proceedings and actions for which a limited application is specifically provided by these rules.
- (2) These rules shall be construed so as to achieve consistency with ORS and SRC provisions and to promote the just, speedy and cost effective adjudication of every proceeding and action as well as the efficient use of judicial time and resources.
- (3) Chapters 2 to 7 of the SMCR do not apply to violation or parking violations, except that SMCR 7.050 applies to all cases that may be subject to a federal bankruptcy stay;
- (4) These rules apply to attorneys and to persons representing themselves.

### *1.020 AMENDMENT OF THESE RULES; EFFECTIVE DATE*

- (1) The SMCR may be amended by order of the Municipal Judge.
- (2) Proposed amendments to the SMCR will be posted on the Salem Municipal Court website (<http://www.cityofsalem.net/Departments/AdministrativeServices/MunicipalCourt>). The public will have a 30-day period for comment, unless otherwise ordered by the Municipal Judge.
- (3) The effective date of any amendments to the SMCR shall be 30 days from the date the proposed rule is published on the Municipal Court website, unless otherwise ordered by the Municipal Judge.
- (4) When either of the time limits set forth in subsections (2) and (3) of this rule have been waived by order of the Municipal Judge, the amendments shall be posted for public comment as soon after adoption as is practicable, and the amendment shall be placed on the agenda of the next regularly scheduled SMCR Committee meeting.
- (5) The Court Administrator or designee shall serve as the SMCR Reporter and may correct typographical errors, grammatical errors, and inaccurate website addresses if the correction does not change the substance of the rule. The Court Administrator shall give appropriate notice of corrections to the public.

### *1.030           TRANSITION TO THESE RULES*

On their effective date, these rules, and any amendments, shall apply to all actions and proceedings pending on or commenced after that date, except to the extent that, in the opinion of the court, application of the amendments in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event, the former procedures apply.

### *1.050           ENFORCEABILITY OF LOCAL PRACTICES*

When any local practice of the Salem Municipal Court is not contained in its adopted court rules, the court may not enforce such local practice or impose any sanction therefore, unless the court has first afforded the party or attorney a reasonable opportunity to cure the violation by complying with the local practice.

### *1.080           FORMAT AND LOCATION OF COURT RULES*

- (1) The SMCR must be numbered as closely as possible to and in the same chapter as related UTCR.
- (2) Rules will be maintained pursuant to SRC 4.060 (b).

### *1.090           SANCTIONS*

- (1) If a party or attorney fails to file a pleading or other document in the manner, form or the time required by these rules, the court may strike the pleading or document, or order some other remedy as justice requires.
- (2) If a party or attorney is willfully and prejudicially resistant or refuses to comply with SMCR, the court, on its own motion or that of a party after opportunity for a hearing, may do any of the following:
  - a) Assess against the noncompliant party or attorney or both reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.
  - b) Otherwise award reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.
  - c) Strike the offending pleading or other document.
  - d) Such remedies as justice requires

### *1.100           RELIEF FROM APPLICATION OF COURT RULES*

Relief from application of these rules in an individual case may be given by a judge on good cause shown if necessary to prevent hardship or injustice.

### *1.110 DEFINITIONS*

As used in these rules:

- (1) Party means a litigant or the litigant's attorney.
- (2) Court Administrator means the court administrator, the administrative officer of the records section of the court, and where appropriate, means court clerk.
- (3) Days mean calendar days, unless otherwise specified in these rules.

### *1.130 TIME COMPUTATION*

[ORCP 10](#) shall be followed in computing any time period prescribed by these rules.

### *1.150 HOURS OF COURT OPERATION*

- (1) The Salem Municipal Court, located in City Hall, 555 Liberty St. SE, Salem, Oregon, is generally open to conduct business between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, excluding City holidays.
- (2) Violation Bureau hours are generally 7:00 a.m. to 4:00 p.m.
- (3) Hours may be modified to conduct court business as ordered by the Municipal Judge.

### *1.160 FILING OF DOCUMENTS IN COURT*

Filings are accepted at the Salem Municipal Court located at 555 Liberty St. SE, Salem, Oregon. Filings delivered to a judge outside of a court proceeding, judge's staff, judge's mailbox, or chambers are not considered filed until it is received by the court administrator or designee.

### *1.170 COURT WEBSITE*

The website for the Municipal Court is located at <http://www.cityofsalem.net/Departments/AdministrativeServices/MunicipalCourt>.

### *1.200 INFORMATION ON FREE OR LOW-COST LOCAL LEGAL SERVICES*

Information on free or low-cost legal services in Marion County and the Salem area can be found at the Oregon State Bar website (<http://www.osbar.org/public>).



## **CHAPTER 2 – STANDARDS FOR PLEADINGS AND DOCUMENTS**

### *2.010 FORM OF DOCUMENTS*

The form of all documents, including pleadings and motions, except where a different procedure is specified by ORS, SRC or rule, must be:

(1) Definitions

- a) Document, as used in this rule, means every paper filed in any type of proceeding.
- b) Printed document means documents wholly or partially printed.

(2) Size of Documents

- a) All documents, except exhibits, must be prepared on letter-size (8 ½ x 11 inches) paper, except that smaller size paper may be used for bench warrants, commitments, uniform citations and complaints and other documents otherwise designated by the court.

(3) Documents Must be Printed or Typed

- a) All documents must be printed or typed; except that blanks in preprinted forms may be completed in handwriting and notations by the court administrator or judge may be made in handwriting.

(4) Spacing, Paging and Numbered Lines

- a) All pleadings, motions and requested instructions must be double-spaced and prepared on paper with numbered lines;
- b) All other documents may be single-spaced and the lines need not be numbered.
- c) On the first page of each pleading or similar document, not less than two inches or more than four inches at the top of the page shall be left blank.
- d) All documents, except exhibits, shall be prepared with at least a one-inch binding margin. The binding margin shall be at the edge of each sheet of paper in the document corresponding to the top of the first page printed on the sheet of paper. All documents containing printing on the back side of a sheet shall be printed in such a manner so that when the page is turned on the binding edge, print on the back side is oriented in the same direction as the print on the front side of the following sheet.

(5) Signature

- a) The name of the party or attorney signing any pleading or motion must be typed or printed immediately below the signature. All signatures must be dated.

(6) Attorney and Litigant Information

- a) All documents must include the author's name, address, telephone number, fax number, if any, and, if prepared by an attorney, the name, e-mail address, and the Bar number of the author and the trial attorney assigned to try the case. Any document not bearing the name and Bar number of an attorney as the author or preparer of the document must bear or be accompanied by a certificate in substantially the form set out in Form 2.010.7 in the [UTCR Appendix of Forms](#).

(7) Exhibits

- a) When an exhibit is appended to a filed document, each page of the exhibit must be identified by the word "Exhibit" or "Ex" to appear at the bottom right-hand side of the exhibit, followed by an Arabic numeral identifying the exhibit. Each page number of the exhibit must appear in Arabic numeral immediately below the exhibit number;
- b) e.g.: "Exhibit 2  
(a) Page 10"
- c) Exhibits appended to a pleading may be incorporated by reference in a later pleading.

(8) Information at Bottom of Each Page

- a) The name of the document, and the page number expressed in Arabic numerals, must appear at the bottom right-hand side of each page of each document.

(9) Document Title

- a) The title of each document filed with the court must include an identification of the filing party, such as "Defendant." When there are multiple parties on a side, the party submitting the document must be suitably identified,
- b) The court case number must appear in the caption of every document. Every motion must show in the title the name of the pleading against which it is directed.
- c) When a document applies to more than one case number for the same party, all case numbers must be listed in the caption or attached as an addendum to the document.

(10) Orders, Judgments or Writs

- a) The judge's signature portion of any order, judgment or writ prepared for the court must appear on a page containing at least two lines of the text. Orders, judgments or writs embodying the ruling of a particular judge must have the name of the judge typed, stamped or printed under the signature line.

- b) If the order, judgment or writ is prepared by a party, the name and identity of the party submitting the order must appear therein, preceded by the words “submitted by.”
- c) Motions and orders may be submitted as a single document only if the motion is stipulated, subject to *ex parte* ruling, not contested or otherwise specifically allowed. Motion and order of dismissal, continuance, or to withdraw may be submitted as a single document. Any other motions must be submitted as a separate document from any proposed form of order deciding the motion. A motion submitted as a single document with an order may not be filed unless the order has been ruled upon and signed by a judge.
- d) When allowed to be submitted as a single document under paragraph (c) of this subsection, motions and orders submitted as a single document must contain a double solid line across the page separating the motion portion of the document from the order portion. The caption of the document must be labeled “Motion xxxxxxxx and Order” in the upper right-hand corner of the document. The full description of the motion must be included in the title. The order portion must be clearly labeled “Order” in the upper left-hand corner of the order portion of the document. A 2-inch by 2-inch space must be provided below the double solid line in the upper right-hand corner of the order portion for the file/date stamp of the order. The order portions must be written as clearly and simply as possible. Where appropriate, the order must consist of only two check boxes as follows: one for allowed, the other for denied. Where such check boxes are used in the order portion, they must be placed above the standard date and signature lines.
- e) If the order, judgment, writ or ruling of the court is encompassed in a letter opinion issued by a judge of the Salem Municipal Court, the words “Order, Judgment, Motion xxx Granted, or Motion xxx Denied, etc.” shall be clearly and prominently displayed in bold-face above the salutation and again at the end of the letter above the standard (date and) signature line.
- f) A hand-written order, judgment, writ or ruling of the court may be entered in any criminal, violation, infraction, or parking violation decision in the Salem Municipal Court so long as the case number, citation, or summons number and defendant’s name is clearly displayed and the words “Order, Motion xxx Granted, or Motion xxx Denied, etc.” shall be clearly and prominently displayed above the date and signature line.

(11) Citation of Oregon Cases

- a) In all matters submitted to the Salem Municipal court, Oregon cases must be cited by reference to the Oregon Reports as Blank v. Blank, \_\_\_\_ Or \_\_\_\_ (year) or as State v. Blank, \_\_\_\_ Or App \_\_\_\_ (year); cases cited from Salem Municipal

Court must be cited as City of Salem v. Blank, case number YYYY- \_\_\_\_\_ - CR.

(12) Notice of Address, Telephonic Number, or Email Address Change

- a) An attorney or unrepresented party whose address or telephonic number changes must immediately mail or deliver notification of such change to the Salem Municipal Court, Court Administrator and all other parties.

(13) Application to Court Forms

- a) Forms created by the Salem Municipal Court are not required to comply with the provisions of UTCR 2.010(4) or (8) where the Salem Municipal court determines variation from those provisions will promote administrative convenience for the court or parties. Such forms and exact copies of such forms may be used and submitted to the Salem Municipal Court without challenge.

**2.020 CERTIFICATE OF SERVICE**

When a summons or other civil process is served by one other than a sheriff or deputy sheriff, the certificate of service must include the name, telephone number and address of the person who served the summons or process.

**2.030 MATTERS UNDER ADVISEMENT MORE THAN 30 DAYS**

- (1) If any judge or Pro Tem judge shall have any matter under advisement for a period of more than 30 days, it shall be the duty of all parties to call the matter to the court administrator or designee's attention forthwith, in writing.
- (2) If the matter remains under advisement for 60 days, all parties are required to call the matter to the judge's attention forthwith, in writing, with copies to the presiding (elected) judge.

**2.080 COMMUNICATION WITH COURT**

- (1) Except as exempted by ORS, UTCR 2.100, or UTCR 2.110, when written communication is made to the court, copies must simultaneously be mailed or delivered to all other parties and indication made on the original of such mailing deliver.
- (2) All written communication to the court shall refer to the title of the case and the case number.

**2.090 FILINGS FOR CONSOLIDATED CASES**

Cases that are consolidated are consolidated for the purposes of hearing or trial only. All pleadings, memoranda, and other documents applicable to more than one file will be filed

in each case under existing captions and case numbers unless otherwise ordered by the court. Unless otherwise ordered by the court, any document applicable to only a single file will be singly filed. It is the duty of counsel to provide the court administrator with sufficient documents to allow filings consistent with this rule or a court order pursuant to this rule.

### *2.120 AFFIDAVITS*

Unless otherwise mandated by statute, an affidavit required by the UTCR need not be notarized, but it must be signed by the affiant and must include a sentence, in prominent letters immediately above the signature of the affiant, that is in substantially the same form as the sentence for declaration under penalty of perjury as specified in ORCP 1 E.

## **CHAPTER 3 – DECORUM IN PROCEEDINGS**

### *3.010 PROPER APPAREL*

- (1) All persons attending the court must be dressed so as not to detract from the dignity of court. Members of the public not dressed in accordance with this rule may be excused from the courtroom.
- (2) When appearing in court, all attorneys and court officials must wear appropriate attire.

### *3.020 PROPER APPAREL FOR INCARCERATED WITNESSES AND DEFENDANTS APPEARING IN CRIMINAL PROCEEDINGS*

Incarcerated witnesses and defendants appearing for trial must be dressed in neat, clean civilian clothing, unless otherwise ordered by the court.

### *3.030 MANNER OF ADDRESS*

During trial, the litigants and litigants' attorneys must not address adult witnesses, jurors or opposing parties by their first names, and, except in voir dire, must not address jurors individually.

### *3.040 ADVICE TO CLIENTS AND WITNESSES OF COURTROOM FORMALITIES*

Attorneys must advise their clients and witnesses of the formalities of the court and must encourage their cooperation. Unrepresented parties must similarly advise their witnesses and encourage their cooperation.

### *3.050 PROPER POSITION OF PARTIES BEFORE COURT*

Parties must:

- (1) rise from their positions at counsel table and remain standing while addressing the court or the jury, except during voir dire;
- (2) not approach the bench except by permission;
- (3) be allowed to move freely about the courtroom during trial unless otherwise instructed by the court.

### *3.060 DEFENDANT IN CRIMINAL TRIAL*

During arraignment, plea and sentence, the defendant must stand unless otherwise permitted by the court.

### *3.070 PERSONS PERMITTED WITHIN BAR OF COURT*

- (1) Except as otherwise permitted by the court, during trial of any case or the presentation of any matter to the court, no persons, including members of litigants' families, shall be permitted within the bar of the courtroom, other than clients, attorneys, court personnel and witnesses when called to the stand.
- (2) Unless specifically excluded by the court, during arraignment on criminal matters, a legal assistant, paralegal or third year certified law clerk may be permitted within the bar of the courtroom to assist the city attorney, assistant city attorney or defense attorney in facilitating the arraignment process and providing discovery.

### *3.080 PROCEDURES FOR SWEARING WITNESSES*

The swearing of witnesses shall be conducted as a serious ceremony and not as a mere formality.

### *3.090 UNDUE RECOGNITION OR FAMILIARITY BY JUDGE*

Judges shall refrain from showing undue recognition of or familiarity with any person in the courtroom.

### *3.100 PROPER USE OF COURT CHAMBERS*

Except when court business is being conducted, parties must not congregate in the court's chambers or use the facilities or the court's entryway between the chambers and the bench without the permission of the court.

### *3.110 CONFERENCES IN CHAMBERS*

Conferences may be conducted in chambers and shall be conducted without litigants present unless required by the court, requested by a party or otherwise required.

### *3.120 COMMUNICATION WITH JURORS*

- (1) Except as necessary during trial, and except as provided in subsection (2), parties, witnesses or court employees must not initiate contact with any juror concerning any case which the juror was sworn to try.
- (2) After a sufficient showing to the court and on order of the court, a party may have contact with a juror in the presence of the court and opposing party when:
  - a) there is a reasonable ground to believe that there has been a mistake in the announcing or recording of a verdict; or
  - b) there is a reasonable ground to believe that a juror or the jury has been guilty of fraud or misconduct sufficient to justify setting aside or modifying the verdict or judgment.

### *3.130 DISCLOSURE OF RELATED MATTERS WHEN SEEKING COURT ORDER*

When a party seeks to obtain an order from a judge, the party must inform that judge of any ruling, hearing or application for a ruling or hearing before any other judge that concerns the subject of the order requested.

### *3.140 MOTION TO WITHDRAW, RESIGNATION (CHANGE), MOTION TO REQUEST SUBSTITUTION OF ATTORNEYS*

- (1) Except as provided in subsection (2), or unless relieved by the court, pursuant to SRC 40.090 (d) an attorney appointed by this court to represent an indigent defendant shall remain the attorney-of-record until a judgment or final determination is entered in the appropriate record of this court.
- (2) At any time, upon written motion and supporting affidavit of the client or attorney-of-record, for good cause shown, the client or attorney may seek to change, withdraw, resign, or substitute attorneys when:
  - a) There is a reasonable ground to believe an ethical conflict has arisen which has irretrievably broken the attorney-client relationship or compels the attorney to seek to resign;

- b) There is a reasonable ground to believe the client is no longer indigent and is capable of employing his/her own counsel;
  - c) There is a reasonable ground to believe that the administration of justice and the rights of the client would be best served with new counsel; and
  - d) The motion to withdraw is not made for purposes of delay or to frustrate any prior case-related rulings of the court.
- (3) Except as provided in subsection (4), an attorney who is retained and who files the initial appearance for a defendant, or who personally appears for a defendant at arraignment on an offense, is deemed to be that defendant's attorney-of record, unless at that time the attorney otherwise notifies the court and the City Attorney in open court that he/she is appearing on behalf of the actual attorney-of-record, and shall remain the attorney-of-record until a judgment or final determination is entered in the appropriate record of this court.
- (4) At any time, upon written motion and supporting affidavit of the client or attorney-of-record, for good cause shown, the client or attorney may seek to change, withdraw, resign, or substitute attorneys when:
- a) There is a reasonable ground to believe an ethical conflict has arisen which has irretrievably broken the attorney-client relationship or compels the attorney to seek to resign;
  - b) There is a reasonable ground to believe the client is indigent and no longer capable of employing his/her own counsel;
  - c) There is a reasonable ground for the client retaining new, substitute counsel of his/her choice;
  - d) There is a reasonable ground to believe that the administration of justice and the rights of the client would be best served with new counsel;
  - e) The motion must contain the name, address and telephone number of the party and the proposed new attorney, if known, and the date of any scheduled trial or hearing. The attorney's fax number and e-mail address, if any, must also be included. It must be served on that party and the City Attorney; and
  - f) The motion to withdraw is not made for purposes of delay or to frustrate any prior case-related rulings of the court.



- (5) When an attorney or defendant seeks to obtain an Order allowing withdrawal, resignation, change or substitution of counsel from this court, the moving party must inform the court of any ruling, hearing or application for a ruling before any other judge that concerns the subject of the order requested. The presiding judge of this court shall have final authority.
- (6) When an attorney or defendant seeks to obtain an Order allowing withdrawal, resignation, change or substitution of counsel less than thirty (30) days before trial, the motion shall be presented to the presiding judge for final ruling.

### *3.150 NO REACTION TO JURY VERDICT*

After the jury returns a verdict, all persons present in the courtroom must remain seated until the jury has left the room and must refrain from visibly or audibly reacting to the verdict in a manner which disrupts the dignity of the courtroom.

### *3.160 EXPLANATION OF PROCEEDINGS TO JURORS*

In jury cases, after sustaining a dismissal of the case before verdict, the judge, in dismissing the jury, should, without discussion of the facts, briefly explain the procedure and why a verdict was unnecessary.

### *3.180 MEDIA OR OTHER PUBLIC ACCESS COVERAGE OF COURT EVENTS*

(1) Public Access Coverage Defined. As used in this rule:

- a) “Public access coverage” means coverage by means of any public access coverage equipment.
- b) “Public access coverage equipment” means any of the following in the possession of person other than the court or the court’s staff; television equipment; still photography equipment; audio, video, or other electronic recording equipment.

(2) Courtrooms. Upon request or on the court’s own motion, after notice to all parties, public access coverage shall be allowed in any courtroom, except as provided under this rule.

- a) All news media personnel must request permission in advance to take photographs, films, or audio or video recordings in areas under the Court’s control and supervision.

- b) Requests for media access shall be made to the Court Administrator at least 30 minutes prior to routine trials or hearings and by 3:00 PM of the preceding day for major trials.
  - c) Persons who are not members of the news media may not take films, photographs, or audio or video recordings of Court proceedings without special approval from a judge.
- (3) There shall be no media or public access coverage of the following:
- a) Proceedings in chambers.
  - b) Any notes or conversations intended to be private, including, but not limited to, counsel and judges at the bench and conferences involving counsel and their clients.
  - c) Voir dire.
  - d) Any juror anywhere during the course of the trial in which he or she sits.
  - e) Recesses.
- (4) Limitations on Denial of Public Access Coverage in Courtrooms. A judge may deny a request for or terminate public access coverage only if the judge makes findings of fact on the record setting forth substantial reasons for the denial. The judge may prohibit public access coverage if there is a reasonable likelihood of any of the following:
- a) The public access coverage would interfere with the rights of the parties to a fair trial or would affect the presentation of evidence or outcome of the trial.
  - b) Any cost or increased burden resulting from the public access coverage would interfere with the efficient administration of justice.
- (5) A judge may summarily prohibit public access coverage of a particular witness only if the judge finds on the record that public access coverage would endanger the welfare of the witness or materially hamper the witness' testimony.
- (6) Equipment and Personnel for Public Access Coverage. The court may limit the location of public access coverage equipment. One pool video camera and one pool still camera and one pool tape recorder shall be permitted.
- a) No public access device shall be operated by more than one person.
  - b) No person shall use public access coverage equipment that interferes or distracts from proceedings in the court room.
  - c) The video camera must be mounted on a tripod or other device or installed in the courtroom. The tripod or other device must not be moved while the

proceedings are in session. Video equipment must be screened where practicable or located and operated as directed by the court.

- d) No artificial lighting devices of any kind shall be allowed.
  - e) Any pooling arrangement required by limitations on equipment and personnel imposed by the judge or by this rule must be the sole responsibility of the persons seeking public access coverage, without calling upon the judge to mediate any disputes involved therein.
- (7) A judge may impose other restrictions or limitations necessary to preserve the solemnity, decorum, and dignity of the court and to protect the parties, witnesses, and jurors.
- (8) Nothing in this rule is intended to limit the court's contempt powers.

**3.182            *USE OF CELL PHONES AND OTHER PERSONAL DATA AND COMMUNICATION DEVICES WHICH HAVE AUDIO RECORDING, PHOTOGRAPHIC OR ANY OTHER VISUAL OR IMAGE RECORDING OR REPRODUCTION CAPABILITY***

- (1) Cell phones and other personal data or communication devices which have audio recording, photographic or any other visual or image recording or reproduction capability:
- a) constitute public access coverage equipment as defined in UTCR 3.180;
  - b) such devices may be used in a facility occupied by the court only as provided by UTCR 3.180, SLR 3.181, and this rule;
  - c) must be turned off when entering any courtroom in any facility occupied by the court as provided by SLR 6.027, and must not be turned on for any use in a courtroom without complying with SLR 6.027, UTCR 3.180 and this rule.
- (2) Cell phones or other telecommunication devices may be used in areas outside of a courtroom, as defined in UTCR 3.180 and SLR 3.181, in a facility occupied by the court without violating this rule or SLR 3.181, provided that such use is restricted to the transmission of the user's oral communication only and does not involve any operation or use of the device's audio recording, photographic or any other visual or image recording or reproduction capability.
- (3) In addition to any other consequence permitted under law or court rules, violators of this rule are subject to being ordered by the court to delete from the device any audio recording, photographic or any other visual or image recording or reproduction made in a court facility.

## **CHAPTER 4 – PROCEEDINGS IN CRIMINAL CASES**

### **4.010**         *TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES*

- (1) Motions for pretrial rulings on matters subject to ORS 135.037 and ORS 135.805 to 135.873 must be filed in writing not less than 21 days before trial or within 7 days after arraignment, whichever is later, unless a different time is permitted by the court for good cause shown.
- (2) No hearing will be set for a motion, until the motion has been filed with the court.
- (3) Unless for good cause shown, in order to facilitate compliance with subsection (1), the City Attorney and defendant's counsel shall provide discovery to the defendant, or defendant's counsel if represented, in all criminal matters in accordance with ORS 135.805 and 135.835, et seq.
- (4) It shall be the responsibility of the court to provide discovery to both defense counsel and the city attorney's office in all court-initiated probation violation matters. Discovery will be provided at arraignment, or as otherwise directed by the court.

### **4.030**         *PROCEDURE FOR ORDER OF TRANSPORTATION*

- (1) Any motion that a person held in custody be transported from the place of confinement to a designated place must be accompanied by a separate proposed court order directing the officer to transport the person to and from the designated place at the appointed time.
- (2) All proposed orders of transportation must contain the dates and times on which the person in custody is to appear at the designated place and is to be returned to the place of confinement, the exact location of the designated place and, if the person in custody is to appear as a witness in a court proceeding, the caption and number of the case. A person in custody appearing as a witness must be returned to the place of confinement only after execution of an order of release signed by the judge presiding over the court proceeding.

### **4.050**         *ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES*

- (1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of the response, except that the court is not required to grant oral argument on a motion to postpone trial. The first paragraph of the motion or response must include an estimate of the time required for argument.
- (2) Counsel for either the City or the defense may request that a motion not requiring testimony be heard by telecommunication. The following apply to a request for oral argument by telecommunication:

- a) A request must be in the caption of the motion or response. If oral argument by telecommunication is requested, the first paragraph of the motion or response must include the names and telephone numbers of all parties served with the request, a statement whether the office of the requesting person is more than 25 miles from the courthouse, the position of opposing counsel, and if the defendant has waived in writing the right to appear at the hearing.
  - b) A request by counsel for defense must be granted if counsel for defendant represents that the defendant agrees to the procedure and provides a signed waiver of personal appearance, and if counsel for the defendant is located more than 25 miles from the courthouse.
  - c) A request by the City must be granted if both parties agree and counsel for the defense provides a written waiver from the defendant.
- (3) “Telecommunication” must be by telephone or other electronic device that permits all participants to hear and speak with each other.

#### *4.060 MOTION TO SUPPRESS EVIDENCE*

- (1) All motions to suppress evidence:
- a) Must make reference to any constitutional provision, statute, SRC, rule, case or other authority upon which it is based; and
  - b) Must be accompanied by the moving party’s brief which must reasonably apprise the court and the adverse party of the arguments and authorities relied upon.
- (2) Any response to a motion to suppress:
- a) Together with opposing affidavits, if any, upon which it is based must be in writing and must be served and filed not more than 7 days after the motion to suppress has been filed, unless otherwise designated by the court;
  - b) Must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement to the extent to which it is not opposed; and
  - c) Must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.
- (3) When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.
- (4) Failure to file a written response shall not preclude a hearing on the merits.

**4.070**            *DISMISSAL OF CHARGES FOLLOWING SUCCESSFUL  
COMPLETION OF DIVERSION*

For any charge dismissed based upon successful completion of diversion for driving under the influence of intoxicants, city attorney diversion, or any other diversion program, the dismissing instrument must state the basis for dismissal.

**4.080**            *APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF  
SIMULTANEOUS ELECTRONIC TRANSMISSION*

The court may conduct an appearance in a criminal proceeding by the following types of simultaneous electronic transmission, as defined in ORS 131.045, if the transmission complies with the requirements of ORS 131.045, 135.030, 135.360, 135.767, 137.040, and 137.545:

- (1) Telephone;
- (2) Video conference; and
- (3) Internet.

**CHAPTER 5 - RESERVED FOR FUTURE USE**

**CHAPTER 6 – TRIALS**

**6.011**            *CONFERENCES/SETTLEMENT CONFERENCES IN CRIMINAL  
CASES*

In any criminal proceeding the parties may request the court schedule a settlement conference to consider:

- (1) Simplification of the issues;
- (2) The possibility of obtaining stipulations as to the admissibility of certain documents, exhibits or related matters;
- (3) The possible settlement of the case; and
- (4) Such other matters as may aid in the disposition of the case.

**6.015**            *SUBMISSION AND COPIES OF MOTIONS, BRIEFS,  
MEMORANDA, AND POINTS AND AUTHORITIES; COPIES TO  
BE DESIGNATED TRIAL COURT COPY*

- (1) A copy of a motion, brief, or memoranda shall be submitted directly to the judge scheduled to hear the matter.

- (2) The copy of the motion and all supporting documentation for the use of the judge shall be designated "TRIAL COURT COPY."
- (3) Copies shall identify the name of the judge hearing the motion, the time of the hearing, the date of the hearing or the show cause assignment date.
- (4) Jury Instructions, Verdict Forms, Trial Memorandums, and similar materials, shall be submitted directly to the judge scheduled to hear the matter prior to jury selection or swearing of first witness in a bench trial;
- (5) Motions in Limine shall be submitted to the court at the Pre-trial conference or at such other time as designated by the court at the time the defendant's not guilty plea was entered.

*6.020 COURT NOTIFICATION ON SETTLEMENT OR CHANGE OF PLEA*

- (1) In criminal cases, the parties must notify the court immediately of any decision that a case will be dismissed or a change of plea entered.
- (2) In all criminal jury trial cases, the parties must immediately notify the court of a decision to settle, dismiss, change plea, or otherwise resolve a case. After receipt of a signed waiver of jury trial and notice of intent to plea, the court may release the jury panel summoned for the trial, require the defendant to appear as scheduled for trial to enter the plea and sentence, or authorize the defendant to appear on a different date and time upon signing a new hearing notice.
- (3) If the parties to a jury trial fail to notify pursuant to (2) the court of a settlement before 12:00 p.m. (noon) of the last judicial day preceding a jury trial, or if the case settles after 12:00 p.m. (noon) of such day, the court may assess on one or both parties or their attorneys the per diem fees of bringing in the jury panel for that particular trial.
- (4) In criminal cases, motion to dismiss a pending matter shall be in writing, must note the basis for the motion with particularity, and whether the requested dismissal is with or without prejudice.
- (5) In criminal cases, if there were any pre-trial motions or contested hearings on the matter, the motion to dismiss shall be presented to the judge who heard the motion, or the presiding judge if the pro tem judge who heard the motion is no longer serving as a pro tem, or is otherwise not available.

*6.027            PERSONAL COMMUNICATION DEVICES IN JURY ROOMS  
DURING DELIBERATIONS AND IN COURTROOMS DURING  
PROCEEDINGS*

- (1) Unless otherwise permitted by the judge presiding over the trial, personal communication devices (any electronic or other equipment capable of communicating with others outside a jury room, including, but not limited to cell phones and pagers) are not allowed in a jury room during jury deliberations.
- (2) After a jury has been instructed and charged to commence deliberations the courtroom clerk will collect all such devices and retain them in a secure place during deliberations.
- (3) Unless otherwise permitted by the judge presiding over the proceeding, personal communication devices (any electronic or other equipment capable of communicating with others outside a courtroom by transmission of sound or images, including, but not limited to cell phones and pagers) taken into a courtroom by any person shall be turned off upon entering the courtroom and shall remain off until after the person has departed from the courtroom.
- (4) See 3.182 regarding the operation of cell phones and other personal data and communication devices which have audio recording, photographic or any other visual or image recording or reproduction capability.

*6.030            POSTPONEMENT OF TRIAL*

- (1) A request to postpone a trial must be by written motion, unless otherwise allowed by the court.
- (2) A motion to postpone a trial must be signed by the attorney of record and contain a certificate stating that counsel has advised the client of the request and must set forth:
  - a) The date scheduled for trial,
  - b) The reason for the requested postponement,
  - c) The dates previously set for trial,
  - d) The date of each previous postponement,
  - e) Whether the opposing counsel objects to the requested postponement, and
  - f) Whether a specific waiver of speedy trial rights has been previously made.
- (3) If the motion to postpone is based upon a conflicting proceeding in another court, it must set forth, in addition to the information required by subsection (2) of this section:
  - a) The name of the court in which the conflict exists,



- b) The date of the conflict,
  - c) The date on which the other proceeding is to begin,
  - d) The case number and the date of filing of the conflicting case,
  - e) The date on which the conflicting case was set for trial, and
  - f) The information required by SMCR 6.040(2).
- (4) The motion may be decided by a summary determination without a hearing.

#### **6.040 RESOLVING SCHEDULING CONFLICTS**

- (1) When a party is scheduled to appear in more than one court at the same time, and has been unable to obtain a postponement in one of the courts, the scheduling conflict will be resolved by the presiding judges of the affected courts on motion of the affected party in both courts.
- (2) In resolving scheduling conflicts, the following must be considered
- a) Statutory preference;
  - b) The custodial status of a criminal defendant;
  - c) The filing date of the case;
  - d) The dates on which the courts sent notices of the trial date;
  - e) The relative complexity of the cases;
  - f) The availability of competent, prepared substitute counsel; and
  - g) The inconvenience to the parties, the witnesses or the court.

#### **6.050 SUBMISSION OF TRIAL MEMORANDA**

Trial memoranda, if any, must be filed with the Court Administrator, and copies must be delivered concurrently to the court and to opposing parties.

#### **6.060 PROPOSED JURY INSTRUCTIONS AND VERDICT FORMS**

- (1) All requested jury instructions and verdict forms must be in writing and delivered concurrently to the trial judge and to opposing parties.
- (2) The original and one copy of the requested jury instructions and verdict forms must be submitted to the court.
- (3) Requested instructions may include any Uniform Oregon Jury Instruction by reference only to its instruction number and title: such as “Instruction No. 70.04 – Lookout.” If the uniform instruction contains blanks or alternative choices, the appropriate material to complete the instruction must be supplied in the request.

- (4) Requested jury instructions, including references to Uniform Oregon Jury Instructions, must be prepared as follows:
- a) Requested uniform instructions must be identified in accordance with SMCR 6.060(3).
  - b) Instructions, including uniform instructions, must be numbered consecutively, beginning with the number “1” for the first requested instruction.
  - c) Except for requested uniform instructions, not more than one proposed instruction must appear on each sheet of paper.
  - d) If any requested jury instruction requires more than one page to be set out, each of the pages must be numbered at the lower left-hand corner; the number must contain the consecutively assigned requested jury instruction number provided pursuant to subparagraph (b) of this paragraph, followed by a hyphen, followed by the consecutive number for each page.
  - e) The designation of the party requesting the instruction must be typed on each page.
  - f) Below each requested instruction must be a statement citing the statute, decision or other legal authority which supports the requested instruction.
- (5) The court must inform the parties before argument of the instructions that it proposed to give.
- (6) Proposed verdict forms must be prepared without the name of the attorney or the firm or reference to the City Attorney’s office and must be submitted at commencement of trial and as otherwise allowed by the court.

#### *6.070 JURY INSTRUCTIONS*

No identifying information relating to the parties or any other extraneous material, including authorities, shall appear on submitted jury instructions.

#### *6.080 MARKING EXHIBITS*

- (1) Before the commencement of the trial, parties must mark all exhibits in the following manner:
- a) Plaintiff’s exhibits must be marked consecutively from 1 through 99.
  - b) Defendant’s exhibits must be marked consecutively from 101 through 199.
  - c) On request, the court must assign additional blocks of numbers.
  - d) In cases involving multiple parties or large number of exhibits, the city attorney shall use 1-99; the first-named defendant shall use 101-199; the

second-named defendant shall use 201 -299; on so on. If the parties cannot reach agreement, or the number system cannot accommodate the parties, then the court may direct the parties to use any other numbering system not inconsistent with the intent of this section.

- (2) Upon request, the court administrator shall provide a party with appropriate stamps, label or tags for exhibit marking.
- (3) The parties must submit to the court at the time of trial a list of premarked exhibits.
- (4) Exhibits not available at the commencement of trial, exhibits not reasonably anticipated to be used and exhibits intended for impeachment purposes need not be premarked.

#### *6.085 EX PARTE MATTERS*

Ex parte matters may be presented as designated by the court.

#### *6.100 EXAMINATION OF WITNESSES*

Except for good cause shown, no more than one attorney for each party shall examine a witness or present argument on an issue.

#### *6.110 RECORDING OF TESTIMONY*

When good cause is shown, the court may authorize a court reporter to record testimony during a trial, at the requesting party's expense or as authorized by the court.

#### *6.120 DISPOSITION OF EXHIBITS*

Unless otherwise ordered, all exhibits shall be returned to the custody of counsel for the submitting parties upon conclusion of the trial or hearing. Counsel to whom any exhibits have been returned must retain custody and control until final disposition of the case or appeal. After disposition of the case, exhibits not returned to the parties shall be sent to the parties of record that, unless they withdraw their respective exhibits within 30 days, the exhibits will be disposed of by the court.

#### *6.150 WEAPONS AND DANGEROUS INSTRUMENTS IN THE COURTROOM*

If a party intends to offer into evidence any weapons or other hazardous materials at an evidentiary hearing or trial, before bringing the items into the courtroom, the party must:

- (1) For weapons:
  - a) All firearms, BB guns, and pellet guns intended to be offered in evidence must be unloaded and either rendered inoperable or have a trigger guard installed.

- b) Guns and ammunition must be kept separate at all times.
  - c) Knives, scissors, and any other sharp objects that could penetrate the skin must be sealed in puncture-proof containers, provided with secure and protective sheaths, or otherwise rendered harmless.
- (2) For other hazardous materials;
- a) Hypodermic needles must be provided with covers over needle points and sealed in a transparent puncture-proof bag.
  - b) An unbreakable, transparent tube that locks on one end must be provided for safe handling and viewing of chemicals, pharmaceuticals, and biological substances.

**6.180**            *WEAPONS AND HAZARDOUS SUBSTANCES IN COURT FACILITIES*

Unless otherwise ordered by the court, no person except a law enforcement officer shall possess in a court facility a firearm, knife, device, or hazardous substance capable of inflicting death or physical injury.

**CHAPTER 7 – CASE MANAGEMENT AND CALENDARING**

**7.010**            *PLEAS, NEGOTIATIONS, DISCOVERY AND TRIAL DATES IN CRIMINAL CASES*

- (1) At the time of arraignment, the court may either accept a not guilty plea and set a trial date or set a date for entry of plea in accordance with subsection (2) of this section.
- (2) Plea agreements, negotiations, discovery, and investigations must be concluded by a date as set by the court which is:
  - a) For defendants in custody, not less than 21 days after arraignment but, in any event, not later than 21 days prior to the trial date; and
  - b) For defendants who are not in custody, not less than 35 days after arraignment, but not later than the 35<sup>th</sup> day prior to the trial date.
- (3) Not later than the date set pursuant to subsection (2), trial counsel must report the following:
  - a) Whether jury trial is requested;
  - b) The probable length of trial;
  - c) The need for a pretrial hearing;
  - d) Any other matter affecting the case.

- (4) Relief from the dates set pursuant to subsection (2) of this rule shall be granted for good cause shown.

### *7.030 COMPLEX CASES*

- (1) Any party in a case may apply to the presiding judge to have the matter designated as a “complex case.”
- (2) The criteria used for designation as a “complex case” may include, but are not limited to, the following: the number of parties involved the complexity of the legal issues, the expected extent and difficulty of discovery, the number of pending charges, and the anticipated length of trial.
- (3) The presiding judge may assign any matter designated a “complex case” to a specific judge who shall thereafter have full or partial responsibility for the case as determined by the presiding judge.

### *7.040 NOTIFY COURT OF SETTLEMENTS AND OTHER MATTERS*

The parties shall report immediately to the court any resolution of any matter scheduled on the court’s docket.

### *7.060 AMERICANS WITH DISABILITIES ACT (ADA) ACCOMODATION*

- (1) If special accommodation under the ADA is needed for an individual in a court proceeding, the party needing accommodation for the individual must notify the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.
- (2) Notification to the court must provide:
- a) The name of the person needing accommodation;
  - b) The case number;
  - c) Charges (if applicable);
  - d) The nature of the proceeding;
  - e) The person’s status in the proceeding;
  - f) The time, date, and estimated length of the proceeding;
  - g) The type of disability needing accommodation; and
  - h) The type of accommodation, interpreter, or auxiliary aid needed or preferred.

### *7.070 FOREIGN LANGUAGE INTERPRETERS*

- (1) If a foreign language interpreter is needed for a court proceeding, the party in need of an interpreter must notify the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.
- (2) Notification to the court must include:
  - a) The name of the person needing an interpreter;
  - b) The case number;
  - c) Charges (if applicable);
  - d) The nature of the proceeding;
  - e) The person's status in the proceeding;
  - f) The time, date, and estimated length of the proceeding; and
  - g) The language to be interpreted.

### *7.080 INTERPRETERS' REQUESTS FOR INFORMATION*

If requested by a neutral court interpreter, parties in criminal cases shall provide a list of specialized terminology expected to be used in the proceeding in which the interpreter will be providing services. The list shall be provided prior to the commencement of the proceeding. The list shall be kept confidential by the interpreter and is not discoverable.

### *CHAPTERS 8 THROUGH 15 RESERVED FOR LATER USE*

## **CHAPTER 16 – VIOLATIONS**

### *16.010 ATTORNEYS– Violation Cases*

A defendant, who intends to be represented by an attorney at a traffic or violation trial, must provide notification of such intention together with proof of service on the City Attorney and must be filed with the clerk of the court in writing no later than 5 days before trial, unless otherwise allowed for good cause.

16.001 This chapter does not apply to SRC chapters 7 and 102.

### *16.020 TRIALS BY AFFIDAVIT*

Pursuant to ORS 153.080, the Salem Municipal Court will allow trial by affidavit under the following conditions:

- (1) When offender's place of residence is greater than 100 miles from the Salem Municipal Court.

- (2) Use Waiver and Affidavit forms in appendix 1 and 2.
- (3) The waiver and affidavit must be received before the summons date on the citation.
- (4) The court administrator shall post procedures for the trial by affidavit on its website, as approved by the presiding judge.
- (5) Trials by affidavit for violations, including parking tickets, shall apply to citations filed with the court beginning thirty (30) days after the court administrator posts the procedures approved by the presiding judge.

### *16.030 ARRAIGNMENT AND ARRAIGNMENT APPEARANCE OPTIONS*

- (1) Prior to any arraignment date specified on the summons, the defendant may exercise one of the following options to dispose of the case:
  - a) The defendant may file a written plea of no contest and pay the presumptive fine amount on the summons, by mailing the written plea and a check or money order for the fine to the Court. The plea and payment must reach the Court on or before the arraignment date.
  - b) The defendant may enter a written plea no-contest and submit a written explanation of the incident in mitigation of the penalty and/or request a reduction based on driving record. A check or money order for the amount indicated on the summons must be included. The letter and plea must reach the Court prior to the arraignment date.
  - c) The defendant may enter a written plea of not guilty and request that the matter be set for court trial. Any defendant electing to proceed under this subsection must verify his or her residence address and current mailing address. Defendants may request a court trial either in writing, mailed to the Court, or in person. The request must be received on, or prior to, the arraignment date. As set forth below in SMCR 16.195, a default judgment which exceeds the presumptive fine amount set on the citation may be imposed against a defendant who requests a court trial but fails to appear in court for such proceeding.
- (2) At the date and time set for arraignment on the summons, the defendant may appear in person, or by counsel, and may enter a plea of no-contest or not guilty.
  - a) If the defendant enters a plea of no-contest an explanation or statement may be given in mitigation of the offense charged.
  - b) If the defendant enters a plea of not guilty, a court trial will be scheduled. Subject to the availability of court staff, the defendant or counsel must remain to sign for the trial appearance. When court staffing levels are insufficient due to temporary absences or illness, the court administrator may allow for written

mailing of court trial notices after receiving verification of the defendant's current mailing and residential address. The defendant or counsel must contact the court if a trial notice and court date is not received within four weeks of the arraignment.

#### **16.040 VIOLATIONS BUREAU**

- (1) Pursuant to ORS 153.800, and SRC 4.070 the Salem Municipal Court established a Violations Bureau on March 4, 2008. A copy of the Judicial Order pertaining to the Violations Bureau can be obtained at the court.
- (2) If the cited person appears personally, a form which records the person's appearance and contains a waiver of trial and plea of no-contest shall be signed and filed with the Court, pursuant to ORS 153.800(5)(a).
- (3) The fine and applicable assessment(s) shall be paid immediately and in full, unless the Court approves a payment plan.

#### **16.050 NOTICE OF REPRESENTATION BY ATTORNEY**

- (1) If the defendant is represented by counsel for purposes of a first appearance on the violation, the attorney may file with the court a notice of representation and enter a plea on behalf of the defendant. The notice and plea must be signed by the attorney and the signed original notice must be filed prior to the date of the first appearance set on the summons.
- (2) If a defendant is to be represented by an attorney at trial on a violation, and a notice of representation has not been filed previously, notification in writing of such representation together with proof of service on the City Attorney must be filed at least five (5) court days prior to the date of the trial.

#### **16.060 POSTPONEMENTS**

##### **Court Trials**

The request for a postponement of a court trial must be made to the court, in writing and must be received more than 7 days prior to the scheduled trial date. The request must demonstrate good cause for the request in order to be granted.

##### **Notice**

When the Court grants a postponement, the Court will notify all parties of the action. If the postponement is granted in open court, parties personally present are deemed notified. Any witnesses must be notified by the parties of the postponement.



## *16.070 SETTING ASIDE DEFAULT JUDGMENTS*

Except for good cause shown, a defendant against whom a default judgment is entered may request relief from the default judgment, within a reasonable time, not to exceed one year.

## *16.080 DIVERSIONS, DEFERRED SENTENCES, ALTERNATIVE DISPOSITIONS*

The Salem Municipal Court established a traffic diversion program with the initial adoption of these rules in 2008. The rules set forth below will continue in effect for citations issued on or before July 31, 2015, if the offender meets the following requirements:

- (1) The citation was issued for an offense which occurred on after the effective date of these court rules.
- (2) Must not have had any moving violations or traffic crimes (including DUII) in the past ten (10) years in any state.
- (3) Must not have attended or participated in a court-ordered traffic school within the past ten years in any state; this includes in-person and on-line programs.
- (4) The following are excluded from the traffic diversion program:
  - a) Violations occurring in a school zone, work zone, or safety corridor
  - b) No violation involving an accident
  - c) Violation alleging open container, careless driving, or speeding
- (5) Must have no other pending motor vehicle citation in this or any other court.
- (6) Agree to plead no contest to the traffic offense.
- (7) Agree to pay the amount equal to the minimum fine for the offense.
- (8) Agree to attend, complete, and provide proof of completion of the court mandated traffic safety program as ordered by the court.
- (9) Receive no motor vehicle citations within the next 120 days.
- (10) Complete a Traffic Safety Diversion Application and Sworn Affidavit.

Successful completion of the traffic diversion program will result in a dismissal of the moving violation. Non-completion of the traffic diversion program will result in a conviction of the offense and the full presumptive fine will be imposed.

There will be no extensions for this program. Traffic Safety Diversion Application and Order is located in appendix 3.

If the court determines that a defendant was not eligible for the program, the court shall revoke the diversion and impose the full presumptive fine. The court may refer the case to the City Attorney for criminal prosecution.

**The court hereby modifies and expands the rules for traffic offenses occurring on or after August 1, 2015.**

Good Driver Traffic Diversion Program

An offender may apply for the Good Driver Traffic Diversion Program if they meet the following:

- (1) The citation was issued for a moving violation, which occurred on or after August 1, 2015.
- (2) Driver/defendant must not have had any moving violations or traffic crimes (including DUII) in the past ten (10) years in any state.
- (3) Driver/defendant must not have attended or participated in a court-ordered or court permitted traffic school within the past ten (10) years in any state; this include in-person and online programs.
- (4) The following are excluded from the traffic diversion program:
  - (a) Speed racing.
  - (b) Speeding in excess of 100 miles per hour.
- (5) Must have no other pending motor vehicle citation in this or any other court.
- (6) Pleads no contest to the traffic offense.
- (7) Pays the amount equal to the minimum fine for the offense.
- (8) Must attend, complete, and pass the traffic safety program as ordered by the court. Must provide proof of successful completion of the program and submit to the court within 120 days from the date of traffic diversion entry.
- (9) Complete a Traffic Safety Diversion Application and Sworn Affidavit.

Successful completion of the Traffic Diversion Program will result in a dismissal of the moving violation. Non-completion or failure to complete the Good Driver Traffic Diversion Program will result in a conviction of the offense.

Except for good cause or hardship shown, there will be no extensions for this program. The driver/defendant must appear in person before the judge to request the extension at such times or days as determined by the court.

The fine imposed must be paid within 120 days from the date of entry into the Good Driver Traffic Diversion Program.

If the court determines that a driver/defendant was not eligible for the program, the court shall revoke the diversion and impose the full presumptive fine. The court may refer the case to the City Attorney for criminal prosecution.

Traffic Safety Diversion Application and Order is located in appendix 3.

#### Youthful Offender Driver Program

Persons under the age of 18 years may apply for the Youthful Offender Diversion Program if they meet the following:

- (1) The citation was issued for a moving violation, which occurred on or after August 1, 2015.
- (2) Driver/defendant must not have had any moving violations or traffic crimes (including DUII) in Oregon or any other state.
- (3) Driver/defendant must not have attended or participated in a court-ordered or court permitted traffic school in any state; this include in-person and online programs.
- (4) The following are excluded from the traffic diversion program:
  - (a) Speed racing.
  - (b) Speeding in excess of 100 miles per hour.
  - (c) Driving without a permit, license, or outside of restrictions.
- (5) Must have no other pending motor vehicle citation in this or any other court.
- (6) Pleads no contest to the traffic offense.
- (7) Pays the amount equal to the minimum fine for the offense.
- (8) Must attend, complete, and pass the traffic safety program as ordered by the court. Must provide proof of successful completion of the program and submit to the court within 120 days from the date of traffic diversion entry.
- (9) Complete a Traffic Safety Diversion Application and Sworn Affidavit.

Successful completion of the Traffic Diversion Program will result in a dismissal of the moving violation. Non-completion or failure to complete the Youthful Offender Driver Program will result in a conviction of the offense.

Except for good cause or hardship shown, there will be no extensions for this program. The driver/defendant must appear in person before the judge to request the extension at such times or days as determined by the court.

The fine imposed must be paid within 120 days from the date of entry into the Good Driver Traffic Diversion Program.

If the court determines that a driver/defendant was not eligible for the program, the court shall revoke the diversion and impose the full presumptive fine. The court may refer the case to the City Attorney for criminal prosecution.

Traffic Safety Diversion Application and Order is located in appendix 3.

### **16.090        *PRETRIAL MOTIONS AND DEMURRERS***

The rules contained in chapter 4 regarding pretrial motions and demurrers in criminal cases, shall apply to violations with respect to any pretrial motion or demurrer applicable by law in a violation case.

- (1) A motion to dismiss a violation citation, which is not a part of a criminal proceeding, that is based upon officer error (i.e. cited defendant to the wrong court), may be submitted by the city officer with a supporting memo advising the court whether the violation has been served a new citation or if no intent to recite.
- (2) A motion to dismiss a violation citation, which is not a part of a criminal proceeding, unless otherwise allowed by the court, must state the basis for the motion with particularity, and if being made by anyone other than the issuing officer, must include:
  - a) A Certificate of Service showing the officer has been served with a copy of the motion
  - b) A Certificate of Service is not required if the citing officer is no longer employed with the City of Salem.

## **CHAPTER 17 –PARKING VIOLATIONS**

### **17.010        *PARKING CITATIONS – DEFENDANT’S APPEARANCE***

- (1) A person receiving a parking citation issued pursuant to SRC chapters 7 and 102, has two options to appear:
  - a) Plead no contest by paying in full the bail indicated on the citation, either by mailing or personally delivering the payment, together with the citation. All pleas and payments must be received before the 14<sup>th</sup> day after the issuance of the citation.
  - b) Request a court hearing by personally appearing before the court on or before the 14<sup>th</sup> day after the issuance of the parking citation.
- (2) An Order for impoundment of a vehicle pursuant to SRC102.155 (a) (6), may be issued in the manner set forth in SMCR 17.035 if the defendant does not appear in a manner indicated in this rule.

*17.020 DISMISSAL OF A PARKING CITATION BEFORE TRIAL*

- (1) The presiding judge, or any pro tem judge of this court, may dismiss parking citations without the appearance of the defendant in the following instances:
  - a) The parking citation was issued prior to release of title interest and transfer of possession of the vehicle to the new owner, but the new owner is named as the defendant on the notice of delinquency. However, the new owner's failure to submit an application for title to the Department of Transportation within 30 days of the transferor's release of interest shall not be grounds for summary dismissal of the citation and an appearance shall be required;
  - b) The parking citation was issued subsequent to the release of title interest and transfer of possession to the new owner but the named defendant on the notice of delinquency is the prior owner. A prior owner who provides documentation described in SMCR 17.025(3), below, shall not be subject to liability under this chapter, for the parking of the vehicle by another person;
  - c) There was no vehicle license number or other registration number written on the citation;
  - d) The vehicle license number written on the citation does not correspond to the vehicle registration information filed with the Motor Vehicles Division;
  - e) The meter at which an overtime parking citation was issued was defective after or while defendant's vehicle was parked, according to the Parking Services staff;
  - f) No violation is indicated on the parking citation;
  - g) The parking citation was issued to a vehicle that was reported to the police as stolen within 24 hours of the date and time listed on the citation or was issued on a date when the status of the vehicle remained listed as stolen, and a stolen report was on file with the Salem Police Department;
  - h) A parking citation was issued to a vehicle on government business of such urgency that the driver was prevented from complying with parking regulations. The driver must follow the prescribed City process. Routine, scheduled court appearances, such as grand jury proceedings, motion hearings, or trials, shall not constitute "government business of such urgency that the driver was prevented from complying with parking regulations."
  - i) The court received a written request for dismissal of the citation from the issuing officer or Parking Enforcement Officer explaining the specific error in the issuance of the parking citation, together with the approval of the citing officer's supervisor; or

- j) The exemption or privilege in ORS 811.635 for the holder of a disabled person parking permit is applicable to the type of parking offense cited and the registered owner or other recipient of the ticket provides proof to the clerk of the court of a valid disabled person parking permit at the time of the violation. This includes:
    - i. Overtime tickets, or tickets for parking in a metered space without paying, unless the zone allows parking for only 30 minutes or less; or
    - ii. Parking in a disabled zone pursuant to ORS 811.615(1)(a); or
    - iii. Disabled zone parking offense cited under SRC 102.085 if a disabled person was being transported; or
  - k) A parking citation was issued for unlawful use or misuse of a disabled person parking permit for parking in a manner that would otherwise be a privilege for a permit holder and the registered owner or other recipient of the ticket provides proof to the clerk of the court of renewal of an expired disabled parking permit.
- (2) The presiding judge, a pro tem judge of this court, may dismiss the parking citations listed in SMCR 17.020(1) by signing a list containing the license numbers of the vehicles and the reasons for the dismissals
- (3) The court administrator – and/or Violations Bureau clerk may dismiss the parking citations listed in SMCR 17.020(1) as per judicial order.
- (4) When a parking citation is subject to dismissal under SMCR 17.020(1) (a) or (b), above, the person receiving the notice of citation must bring the parking citation(s) and relevant documents relating to the transfer of the vehicle, including title, bill of sale or contract and vehicle registration if available, to the court. Proof that the prior owner notified the Department of Transportation of the transfer of the vehicle as required by Oregon law, together with proof of delivery of possession of the vehicle and assignment of title to a transferee, shall exempt the prior owner from liability for the parking of the vehicle by another person, provided the date of issuance of the parking citation is subsequent to the date of transfer of the vehicle reported by the prior owner.
- (5) In all cases, the presiding judge or court administrator may order a hearing to prevent abuse of the summary dismissal proceedings.

### *17.030 TOWING AND IMPOUNDMENTS*

The court may order a vehicle towed if the registered owner or any other person, has not paid the bail or fine.

#### *17.040 NOTICE OF REPRESENTATION BY AN ATTORNEY*

An attorney representing a person in a parking citation case must notify the Court in writing of the representation at least five days before the date of trial. The notification must certify that a copy has been delivered to the City Attorney's office.

#### *17.050 POSTPONEMENTS AND OTHER MOTIONS*

- (1) When requested at least five days prior to the scheduled trial date for a parking citation, a person may obtain a single postponement of the court hearing. Such requests may be made in writing or by appearing personally at the court. The person making the request must state a reason for the postponement.
- (2) At any time before the trial date, the person cited, whether or not represented by counsel, may withdraw a not guilty plea or remove the case from the court docket by following the procedure for mail pleas set out in SMCR 17.010. The Court will notify the police officers, the parking enforcement officers and volunteers and the City Attorney, when appropriate.
- (3) A person whose car has been ordered impounded by the Court may appear personally at the court and request that the matter be placed on the docket for hearing.

#### *17.060 HEARING PROCEDURE IN PARKING CITATION CASES*

- (1) In trial, the judge may take an active role in questioning the witnesses to insure substantial justice will be done.
- (2) Jury trials are not permitted in parking citation cases.
- (3) Parking citations issued against a particular defendant's vehicle may be consolidated for trial only at the discretion of the Court.

#### *17.070 FAILURE TO APPEAR*

The registered owner of a vehicle for which a parking citation is issued, is required to appear, as described in SMCR 17.010, above, on the cited offense. If the registered owner of a vehicle for which a parking citation has been issued, or any other person, fails to appear to answer the citation within 14 days, the court may, after notice to the named defendant, enter a default judgment against the defendant. Citations may be assigned to an external resource for collection. Unless otherwise ordered by the court, a judgment of conviction on the parking citation shall be entered against the registered owner of the vehicle.

## **CHAPTER 19 – CONTEMPT PROCEEDINGS**

### *19.010 SCOPE, CONSTRUCTION, APPLICATION*

- (1) The rules in this SMCR chapter govern contempt proceedings under ORS 33.015 – 33.155 and SRC 4.045 and are intended to promote efficient and fair resolution of contempt proceedings. The rules in this chapter will be changed only by action of the elected judge of this court.
- (2) The rules in this chapter do not preclude judges from exercising their inherent authority in contempt proceedings over matters not covered by rule or statute, so long as that exercise fosters efficient and fair resolution of the matter.

### *19.020 INITIATING INSTRUMENT REQUIREMENTS*

- (1) In addition to any other requirements for initiating instruments, the initiating instrument in a contempt proceeding under ORS 33.055 (remedial) or ORS 33.065 (punitive) must state:
  - a) The maximum sanction(s) that the party seeks;
  - b) Whether the party seeks a sanction of confinement; and
  - c) As to each sanction sought, whether plaintiff considers the sanction remedial or punitive.

#### (2) Maximum Penalty Imposed

The court shall not impose a sanction greater than the sanction sought. A punitive sanction is presumed greater than a remedial sanction. A punitive sanction of confinement is presumed greater than other punitive sanctions. A remedial sanction of confinement is presumed greater than other remedial sanctions.

### *19.030 ALLOWING REMEDIAL SANCTIONS*

Rules that apply to allowing remedial sanctions in a proceeding for only remedial sanctions under ORS 33.055 also apply to allowing remedial sanctions in a proceeding for punitive sanctions under ORS 33.065.

### *19.040 APPLICABILITY OF ORCP AND OTHER UTCR*

- (1) To the extent rules in the chapter are inconsistent with other applicable rules; the rules in this chapter govern contempt proceedings under ORS 33.015 to ORS 33.155. Except as otherwise provided in this chapter:



- a) Oregon Rules of Civil Procedure (ORCP) and Oregon Rules of Appellate Procedure (ORAP) apply respectively to original contempt proceedings for remedial sanctions under ORS 33.055;
  - b) UTCR and ORAP that govern criminal proceedings apply respectively to original contempt proceedings for punitive sanctions under ORS 33.065.
- (2) On its own motion or that of a party in a contempt proceeding for remedial sanctions, the court may determine that a specific rule of procedure would not foster the fair and efficient resolution of the contempt proceeding.
- a) When the court makes that determination, it may modify the specific rule or adopt a different rule for all or part of the proceeding, so long as the modified or new rule fosters the fair and efficient resolution of the proceeding. Under this rule, the court may increase or decrease time limits or may limit or exclude responsive pleadings, or both, and may also modify other rule provisions.
  - b) The court must give all parties to the proceeding notice that describes the modified or new rule. The notice must be in writing or on the record or both.

## **CHAPTER 21 – FILING AND SERVICE BY ELECTRONIC MEANS**

### *21.010 FILING OF DIGITIZED DOCUMENTS*

- (1) The clerk shall provide electronic filing service for all charging instruments in violation cases.
- (2) In matters where electronic filing is authorized the electronically filed document will be part of the official court record. Paper records, if maintained, will be considered a copy of the official court record.
- (3) The following definitions shall apply herein, unless the context requires otherwise:
- a) “Electronic filing” means the transmission of a digitized source document electronically via the City’s internal server systems and infrastructure to the clerk for the purpose of filing the document and refers to the means of transmission or to a document so transmitted.
  - b) “Electronic mail” means messages sent by a user and received by another through an electronic service system utilizing technology. Any charging instrument sent to the court by electronic mail is not considered a legal filing of any form and will not be entered into the court record except upon judicial request.
  - c) “Document” refers to any original charging instrument.

- d) “Electronic Filing Service” means use of the City’s technology infrastructure to facilitate transfer of electronic images of citations between Departments through the City’s imaging system.
- (4) The electronic filing service shall be available twenty-four hours per day, seven days a week. All electronic filing of documents must be completed by 5:00 pm to be considered timely filed that day. Documents transmitted outside of regular court hours shall be deemed filed on the next normal business day of the clerk.
- (5) A document electronically filed shall be accepted as the original filing if the filer complies with all of the requirements set forth in this rule. The filer shall not be required to file the source document with the clerk but must maintain the same in the filer’s records, and have the same available for production on request of the court, the clerk or other counsel. The filer shall maintain the source document until the subject case is closed and all appeals and opportunities for appeal have been exhausted.
- (6) Any attorney, party or other person who elects to file any document electronically shall be responsible for any delay, disruption, interruption of the electronic signals, and readability of the document, and accepts the full risk that the document may not be properly filed with the clerk as a result.
- (7) Documents submitted must be submitted in .tif or .pdf formats.
- (8) Documents filed with the court shall be served in accordance with Oregon Revised Statutes and Salem Revised Code.
- (9) The following documents may be filed by electronic means with the court subject to the conditions set forth herein.
- a) Oregon Uniform Traffic Citations (UTC)
    - i. If an UTC is filed by electronic means, the issuing officer shall provide the defendant with a paper copy of the ticket pursuant to Oregon Revised Statute.
    - ii. A law enforcement officer who files a ticket electronically shall be considered to have certified the ticket which shall have the same rights, responsibilities, and liabilities as with all other tickets issued pursuant to the Oregon Traffic Rules.
  - b) City of Salem Parking Citations

**21.020**      ***ELECTRONIC TRANSFER OF DATA FOR VIOLATION  
COMPLAINTS AND CRIMINAL CITATIONS (E-CITATIONS)***

- 1) Data for violation complaints and criminal citations (herein after collectively referred to as citations for purposes of this rule) may be filed electronically by law enforcement agencies. Citations filed electronically must meet the following criteria:
  - a) The data transmitted to the court by the filing agency contains all information required by ORS 153.770(2)(a) and 133.073 (2)(c), to be included in an electronically filed citation;
  - b) The electronically filed citation contains a unique identification number of the law enforcement officer issuing the citation, the officer's name, and the identity of the agency employing the officer;
  - c) If the citation is a criminal citation with a form of complaint, then no complaint may be filed until it is reviewed by the city prosecutor;
  - d) An image of the citation issued by the law enforcement officer must be transmitted or delivered to the court by the issuing agency or in accordance with court rule 21.010.
  - e) Each citation submitted for filing must be numbered by the issuing agency using a number series approved by the Court Administrator, and the number assigned to the citation by the agency must be unique and not duplicate any number previously submitted to be filed.

**CHAPTER 22 – COURT-APPOINTED ATTORNEY BILLINGS**

**22.010**      ***COURT-APPOINTED ATTORNEY BILLINGS***

- (1) Appointed counsel is compensated pursuant to SRC 4.095 (b). As prescribed in SRC 4.095 (b) and ORS 135.055(3) certain expenses need preauthorization before expenses are incurred. Appointed counsel is responsible for all reasonable and necessary expenses that are ordinary and related to the preparation and presentation of the case.
- (2) The Municipal Court is appropriated funds by City Council through the City's budget process. If the court believes appropriated funds will not be sufficient the court will seek additional funding through a supplemental request to City Council. If City Council does not appropriate sufficient funds, the court will fashion a remedy that is fair and equitable among all appointed counsel. The court will reasonably consult with appointed counsel regarding funding shortages.
- (3) In accordance with ORS 135.055(4) billing of all services shall be submitted upon completion of a case. For all cases in which services are completed, appointed

counsel must submit payment requests to the court within 60 days of the date the court enters in the register of actions:

- a) an order allowing or requiring counsel to withdraw; or
- b) final judgment

When services to the client are suspended because the client enters into a program or agreement which delays final adjudication, counsel may submit payment requests to the court within 90 days.

When the client fails to appear or the court issues a warrant counsel may bill no earlier than 21 days but no later than 90 days from the date the person fails to appear or issues a warrant.

(4) Billing packets will include the following:

- a) Affidavit and Order for Compensation
- b) Supporting documentation which includes:
  - i) Date of event
  - ii) Description of event
  - iii) Hours/time for task or partial hour
  - iv) Rate
  - v) Additional expenses
  - vi) Extended billing amount per line item
  - vii) Total amount billed

(5) Billing will be printed and legible. Total time billed divided among several defendants for a court appearance shall not exceed the actual time in court.

(6) As a general policy the court will not pay interim requests for attorney fees and expenses except as authorized by the judge.

Counsel may not bill for matters on appeal at circuit court, except for the purposes of perfecting the appeal. Circuit court will appoint counsel if defendant qualifies for such counsel.

The court will return requests submitted late unless counsel submits a written explanation showing good cause to excuse delay. The judge will review the written explanation and approve or disallow payment based upon the reason.

Out-of-Court attorney/client communication which requires interpreter services should be billed directly to the court by the interpreter using the prescribed form as back-up to the billing, except as otherwise authorized by the court.

# APPENDIX

**IN THE MUNICIPAL COURT OF THE CITY OF SALEM  
COUNTY OF MARION, STATE OF OREGON**

555 Liberty St SE  
Salem, Oregon 97301-3513

	)	<b>DEFENDANT’S WAIVER OF ORAL</b>
City of Salem	)	<b>TESTIMONY (Trial by Affidavit)</b>
	)	
Plaintiff	)	
v	)	Case/Citation # _____
_____	)	
Defendant	)	<b>DUE BY</b> _____

I have pled **NOT GUILTY** and I hereby waive my rights to have testimony presented in open Court and authorize testimony to be in the form of an affidavit. I realize by signing this waiver that the officer may file an affidavit and not appear in Court. I also realize that I need not appear in person, but may appear by affidavit.

I further state my intentions as follows:

- I waive my right to be present at a hearing and declare that I will submit to the Court my affidavit containing my testimony and affidavits of witnesses, if any, to the Court within thirty (30) days of today’s date, and if I fail to submit said affidavit within thirty (30) days, I authorize the Court to decide whether I am guilty or not guilty based upon the contents of my file. I understand the Court will also consider the officer’s affidavit in deciding whether I am guilty or not guilty.
- (Check here if the officer has asked to provide testimony by affidavit, you want to present your part of the case orally in Court and you are willing to waive your right to have the officer testify in person.)*

I do not waive my right to be present at a hearing and request that I be notified of the date and time of hearing. I waive my right to have the officer testimony presented orally in court.

**I CERTIFY THAT I HAVE READ THE ABOVE AND WAIVE MY RIGHT TO HAVE TESTIMONY PRESENTED IN OPEN COURT. I REQUEST THAT THIS MATTER BE DECIDED AS STATED ABOVE.**

Dated: \_\_\_\_\_  
Signature \_\_\_\_\_ Print Name \_\_\_\_\_

\_\_\_\_\_  
Mailing Address \_\_\_\_\_ City, State, Zip Code \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



Lined area for text entry.

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**IN THE MUNICIPAL COURT OF THE CITY OF SALEM  
COUNTY OF MARION, STATE OF OREGON**

555 Liberty St SE  
Salem, Oregon 97301-3513

City of Salem	)	<b>TRAFFIC SAFETY DIVERSION</b>
	)	<b>APPLICATION, AFFIDAVIT,</b>
Plaintiff	)	<b>AND ORDER</b>
v	)	
_____	)	Case/Citation # _____
Defendant	)	

I, \_\_\_\_\_, Defendant, being duly sworn depose and say:

1. I hereby apply for participation in the Traffic Safety Diversion Program.
2. I have no convictions or diversions for any motor vehicle violation (including DUII) within the ten years immediately preceding the date of this citation.
3. I have no other pending motor vehicle citations in this or any other court.
4. There was not an accident associated with the alleged offense.
5. The alleged offense did not occur in a posted school zone or highway work zone.
6. The violation is not for open container, careless driving, or speeding
7. I agree to plead no contest to the traffic offense with which I am currently charged.
8. I agree to pay the amount equal to the minimum fine (\$ \_\_\_\_\_) for the offense with which I have been charged. Payment in full must be received before the end of the 120 day diversion period.
9. I agree to attend and complete the court mandated traffic safety program within 120 days.
10. I agree to provide proof of completion of the court mandated traffic safety program within 120 days.
11. I agree that I will not receive a citation for a motor vehicle violation within the next 120 days.
12. I understand that if I comply with the conditions of my diversion, this traffic citation will be dismissed by the Court.
13. I understand that if I do not comply with the conditions of my diversion, the diversion will be terminated, I will be convicted of the offense, and will be sentenced to pay the presumptive fine, which will be \$ \_\_\_\_\_. I also understand there will be **NO** extensions, **NO** exceptions.
14. I will keep the court advised of my current mailing address and telephone number during the 120 day diversion period.

My current address and telephone number are:

_____	_____	_____
Mailing Address	City/State/Zip	Telephone

_____	_____
Defendant's Signature	Date Signed

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
**Municipal Court Judge**

**ORDER FOR TRAFFIC SAFETY DIVERSION**

Case/Citation #: \_\_\_\_\_ Name: \_\_\_\_\_

It appearing to the Court that the defendant's application is hereby:

GRANTED

DENIED.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Municipal Court Judge