

TITLE 3

MUNICIPAL COURT¹

CHAPTER

1. CITY JUDGE.
2. CITY COURT.
3. COURT ADMINISTRATION.
4. WARRANTS, SUMMONSES AND SUBPOENAS.
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CHAPTER 1

CITY JUDGE

SECTION

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- 3-105. Qualifications for appointment of judge.
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3-101. Judge to be elected. The Municipal Judge of the City of Millington shall be elected by a popular vote of the registered voters of the City of Millington. The term of office of the municipal judge shall be eight (8) years, except for any initial term which may be shorter. Upon the effective date of this section, the board of mayor and aldermen may appoint a qualified person to serve as municipal judge until the next regular August General State Election. The first municipal judge popularly elected pursuant to this section shall be elected at the next regular August General State Election that takes place at least thirty (30) days after the effective date of this section calling for the judge's

¹Charter reference
City judge: § 12.05.

election. The person elected at this election shall serve only until the next regular judicial election held in accordance with Article 7, Section 5 of the Tennessee Constitution. All subsequent elections for municipal judge pursuant to this section shall be held in accordance with Article 7, Section 5 of the Tennessee Constitution. (1981 Code, § 1-503)

3-102. Compensation of judge. The municipal judge shall receive compensation as fixed by the board of mayor and aldermen by ordinance.¹ Such compensation shall be set prior to the date on which the election for the position of municipal judge is held and shall not be increased nor diminished during the term. (1981 Code, § 1-504, as replaced by Ord. #2006-1, May 2006)

3-103. Duties of judge. The municipal judge shall give such necessary time and attention to the duties of his office so as to efficiently and orderly perform the duties of the office. He may be permitted to engage in the practice of law, or in any other business or profession not conflicting with the performance of his duties as judge. (1981 Code, § 1-505)

3-104. Failure to appear in court; warrant; failure to pay fine; warrant. (1) It shall be unlawful for a defendant to fail to appear in court at the time and place designated by a citation or summons issued in lieu of arrest.

(2) Pursuant to Tennessee Code Annotated, § 7-63-105, upon such failure to appear the judge of the city court may immediately issue a warrant against the defendant for the offense as set forth in the original process and for the additional charge of failure to appear.

(3) It shall be unlawful for a defendant to fail to pay a fine or court costs in the amount and in the manner imposed by the city court. Such failure to pay shall result in the issuance by the court of a summons or arrest warrant to require the defendant's appearance in court to show cause for non-payment.

(4) The power to issue warrants shall be in addition to any powers granted under other provisions of the Millington Municipal Code. (1981 Code, § 1-506 , as replaced by Ord. #2000-13, § 1, June 2000)

3-105. Qualifications for appointment of judge. The judge of the municipal court must meet the requirements and qualifications established in Article 6, Section 4 of the Tennessee Constitution for judges of inferior courts. (1981 Code, § 1-507)

3-106. Vacancy in office--temporary absence of judge. A vacancy in the office of the popularly elected judge shall be filled by appointment by the

¹Ordinances setting compensation of the municipal judge are of record in the office of the city clerk.

board of mayor and aldermen. The person appointed, however, may serve only until the next regular August General State Election. At this election, a person shall be elected to serve any unexpired term if the full term is not to be filled at the election. In the event of a temporary absence or inability of the city judge to serve, the board of mayor and aldermen shall appoint a qualified person to serve until the judge's return. (1981 Code, § 1-509)

3-107. Indictment of judge--results. The Municipal Judge of the City of Millington shall not be eligible to hold court at any time while under indictment by any court of Shelby County, Tennessee, and upon the fact of such indictment being brought to the attention of the Board of Mayor and Aldermen of the City of Millington, it shall be their duty to at once appoint a duly qualified person to act as municipal judge until the indictment against the municipal judge has been disposed of. Such person so appointed shall, during the time of his appointment, receive the same salary as that fixed for the municipal judge. In the event the charges against the municipal judge are disposed of in his favor, then the municipal judge shall be forthwith returned to office and shall receive full compensation for the time that he was removed therefrom. (1981 Code, § 1-510)

3-108. Judge's authority to hold accused to grand jury, or upon waiver, try the offense if a misdemeanor. It shall be the mandatory duty of the judge of the city court of Millington to try all offenses or violations of the ordinances of the City of Millington, and it shall be the mandatory duty of the judge when the defendant is brought before such court upon a state charge to advise such defendant of his constitutional right to be represented by counsel, right to be tried only upon presentment or indictment by a grand jury, right to make a statement with respect to the accusation and the right to waive such statement, and the right to a trial by a jury. Upon the defendant agreeing in writing to waive the right to be put on trial only by presentment or indictment by a grand jury and the right to be tried by a jury of his peers, the court may proceed to hear and determine said case as provided herein and in Tennessee Code Annotated, § 40-1-109. Said waiver shall be written and attached to the warrant substantially in words and figures, as follows:

"The defendant, _____, pleads guilty (not guilty) to the offense of _____, and waives his right to be tried only indictment or presentment preferred by a grand jury, and likewise waives trial by jury of his peers."

Signature of Defendant

ATTEST:

Clerk or Judge

(1981 Code, § 1-515)

3-109. Judge or clerk to administer oaths. The judge of said court is authorized to administer oaths and affirmations, likewise the clerk of said court and his deputies. (1981 Code, § 1-519)

3-110. City judge to hear and decide ordinance violations. The judge shall have the power to render judgment for the city, whenever any person, firm, or corporation is found guilty of a violation of any city ordinance, in any amount now prescribed by law, and if dissatisfied with the judgment of the court, any defendant may appeal to the next term of the circuit court of Shelby County, Tennessee, on giving bond, together with all costs; provided, however, that any judgment of the municipal court in favor of the city for ten dollars (\$10.00) or less shall be final. (1981 Code, § 1-535)

3-111. Judge to forfeit bond for failure to appear. All defendants appearing upon the docket of the municipal court shall be required to appear in person for trial upon any charge when his or her name is called and it shall not be lawful to waive the appearance of said defendant, and if said defendant shall fail to appear when the case is called, the judge of said court shall be required to authorize the clerk of said court to immediately take a forfeiture on the bond or cash forfeit of said defendant. (1981 Code, § 1-542)

3-112. Judge to supervise the execution of judgments. In the event any person, firm or corporation shall, on such trial, be found guilty of a violation of a city ordinance, it shall be the duty of the judge to assess a fine in conformity with the ordinances of the city and the laws of the State of Tennessee, and it shall be the duty of the city judge to see that the city clerk collects the fine and costs in full. In the case of an individual at the beginning of the trial at the time the defendant is informed of his right to an attorney, said defendant will also be informed that if he is found guilty and a fine is levied against him, opportunity to pay said fine will be given to him. No inquiry into the defendant's ability to pay a fine may be made before hearing the case on its merits, a determination of guilt is made, and a fine assessed.

After determination of guilt and a fine assessed, the municipal judge must hold a hearing into the financial status of the defendant to determine said defendant's ability to pay the assessed fine. If the defendant cannot make immediate payment of the fine, he must be given an opportunity to pay the fine according to his ability, whether by installments or merely delay in time of payment, and upon default said individual defendant shall be given a chance to show the reasons for his default. If said reasons are because of his indigency, he may not be imprisoned therefor. The municipal judge may not give a defendant the choice between choosing a jail sentence or a fine, thereby forcing an indigent defendant to choose a jail term because he has no money to pay a fine. (1981 Code, § 1-536)

3-313. Severability. If any provision of title 3, Municipal Court, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of title 3 which can be given effect without the invalid provision or application, and to that end the provisions of title 3 are declared to be severable. (as added by Ord. #2000-13, § 2, June 2000)

CHAPTER 2**CITY COURT****SECTION**

- 3-201. City court created.
- 3-202. Jurisdiction of court.
- 3-203. Place where court to be held.
- 3-204. Municipal court clerk.
- 3-205. Clerk to be bonded.
- 3-206. Vacancy occurring in the office of clerk.
- 3-207. Board to regulate number of court sessions.
- 3-208. Process to be signed by judge or mayor.
- 3-209. Time of trial.
- 3-210. Pauper's oath.
- 3-211. Sureties liable for judgment of court.
- 3-212. Police officers vested with constable's powers.
- 3-213. Municipal court clerk may take bail.
- 3-214. Clerk may take bond from prisoners in default of bail.
- 3-215. Clerk to assist the judge during court hearings.
- 3-216. Board to establish rules and regulations for court.
- 3-217. Violation of provisions of title--misdemeanor.

3-201. City court created.² There shall be a municipal court operating within the corporate limits of the City of Millington as they are now described or may hereafter be changed. (1981 Code, § 1-501)

3-202. Jurisdiction of court. Said court shall be a court of record and shall have original and exclusive jurisdiction of all violations of municipal ordinances and shall also be clothed with the same powers and duties possessed by a justice of the peace touching the arrest and preliminary trial, discharging, binding over, or punishing under the small offense law, of all persons charged with offenses against the state, committed in the city. (1981 Code, § 1-502)

3-203. Place where court to be held. The municipal court shall be conducted within the corporate limits of the City of Millington, presided over by such municipal judge, in the courtroom as provided by the city. (1981 Code, § 1-508)

²Municipal code reference

Disturbance prohibited in city court: § 11-705.

3-204. Municipal court clerk. The Municipal Court Clerk shall be appointed by the city judge whose appointment shall be confirmed by the board of aldermen at such salary as may be fixed by ordinance. (1981 Code, § 1-511, modified)

3-205. Clerk to be bonded. Before assuming the duties of the office, said clerk shall give bond in the sum of \$25,000.00, conditioned to faithfully discharge the duties of such office as such clerk, and properly report and account for all funds coming through his or her hands into his or her office.

The bond of the clerk of the municipal court shall be filed with the clerk of the City of Millington. The municipal court clerk shall be the custodian of the books, dockets and records of the municipal court which shall be open to the public at all reasonable times. (1981 Code, § 1-513)

3-206. Vacancy occurring in the office of clerk. In the event of a vacancy by death, resignation, or removal in the office of the clerk of the municipal court, the unexpired term of such vacancy shall be filled by appointment by the city judge and confirmed by the Board of Mayor and Aldermen of the City of Millington, Tennessee. (1981 Code, § 1-514, modified)

3-207. Board to regulate number of court sessions. The majority of the Board of Mayor and Aldermen of the City of Millington shall have the authority to require the municipal judge to hold as many sessions of said municipal court as in their judgment the business of said court so requires. (1981 Code, § 1-518)

3-208. Process to be signed by judge or mayor. All process issuing from said court shall be signed by the judge, but in the event no regular or special judge is available, the mayor shall have the power to issue warrants for the arrest of all persons charged with the violation of the ordinances of the city. (1981 Code, § 1-520)

3-209. Time of trial. Every person arrested on a charge of violating an ordinance, or on a process issuing from said court, shall be presented to the court for trial as soon as possible, granting to said person charged such reasonable time as may be necessary for such person to prepare his or her defense and obtain counsel for representation. (1981 Code, § 1-521)

3-210. Pauper's oath. Any person convicted who being a pauper and unable to make bond as required may take, upon paying said fine and costs, an appeal to the circuit court by pauper's oath. (1981 Code, § 1-527)

3-211. Sureties liable for judgment of court. When appeals are prosecuted from judgments rendered in the police court of said city, the

appellant shall give a bond with good and sufficient surety or sureties and conditional in addition to all other conditions now prescribed by law, that the surety or sureties shall be liable for whatever judgment may be rendered against the principal in the appellate court; and such appellate court shall, when rendering judgment against the appellant, render a like judgment against the surety or sureties on his appeal bond. (1981 Code, § 1-528)

3-212. Police officers vested with constable's powers. All police officers of the City of Millington, with respect to executions issued from municipal court, are hereby vested with all of the powers, and are charged with all the duties in respect thereto, as constables of any civil district of counties in this state. (1981 Code, § 1-537)

3-213. Municipal court clerk may take bail. The municipal clerk, or his deputy, before whom a defendant is brought for examination on a warrant of arrest is authorized to take bail for his appearance in court to answer the charge. (1981 Code, § 1-539)

3-214. Clerk may take bond from prisoners in default of bail. If the defendant is committed to jail in default of bail, the clerk, or his deputy may take bail at any time thereafter. (1981 Code, § 1-540)

3-215. Clerk to assist judge during court hearings. It shall be the duty of the clerk of the municipal court to call out the names of all defendants appearing upon the docket, in open court, and the judge of said court shall have no authority to dispose of any case appearing upon the docket except in open court, after a full and complete hearing. (1981 Code, § 1-541)

3-216. Board to establish rules and regulations for court. The Board of Mayor and Aldermen of the City of Millington shall have the power to promulgate from time to time such rules and regulations for the conduct and operation of said court as they may deem right and proper. (1981 Code, § 1-543)

3-217. Violation of provisions of title--misdemeanor. The violation of any of the provisions of this title shall constitute a misdemeanor in office. (1981 Code, § 1-544)

CHAPTER 3

COURT ADMINISTRATION

SECTION

3-301. Fines to be assessed in open court--no deletions.

3-302. Fees and court costs to be set by ordinance.

3-303. Court fees and costs.

3-304. Civil action to recover penalty in lieu of arrest.

3-305. Failure of accused to appear for trial--ex parte.

3-306. Collection of delinquent fines and costs by a collection agency.

3-301. Fines to be assessed in open court--no deletions. All fines shall be imposed in open court and as soon as judgment is pronounced said judgment shall be entered in open court on the judge's docket and upon the docket of the clerk of the municipal court, in ink; and it shall be unlawful and a misdemeanor in office to make any erasures or corrections in said figures after said entry has been made; and when any fine has been so imposed the judge shall have no power to remit or release the same or any part thereof, nor shall he have the authority to instruct the clerk of said court to remit or release the same or any part thereof, and the clerk of said court shall have no authority to remit or release the same or any part thereof. (1981 Code, § 1-517)

3-302. Fees and court costs to be set by ordinance. The city shall by ordinance set the fees and court costs payable to the city court, which shall not be in an amount in excess of the amount allowed by state law, and which shall be in addition to any fees, costs or litigation taxes required to be paid to the state. The clerk of the city court shall collect all fees, costs and litigation taxes and shall pay them into the city treasury, except as otherwise required by law to be paid to the State of Tennessee. (1981 Code, § 1-522, as replaced by Ord. #2008-2, June 2008)

3-303. Court fees and costs. Every person as to whom a fine or other penalty is assessed by the city court judge, or where such person is otherwise ordered by the court to pay court costs, shall pay, in addition to any fine assessed by the city court, court costs in the amount of seventy-six dollars (\$76.00). Of that amount, seventy-five dollars (\$75.00) shall be paid to the city, and one dollar (\$1.00) shall be paid to the State of Tennessee. (1981 Code, § 1-523, modified, as replaced by Ord. #2008-2, June 2008)

3-304. Civil action to recover penalty in lieu of arrest. Hereafter, whenever any city ordinance is violated by any person, firm or corporation, who or which is a resident of the City of Millington, whether the violation of such ordinance is a misdemeanor or not, an action, in the nature of a civil action, may

be begun by the City of Millington to recover the penalty provided for violation of such ordinance, in the municipal court of the City of Millington in lieu of arresting the person, firm or corporation violating the provisions of such ordinance.

In such case, a summons shall be issued by the clerk of the municipal court or by the judge thereof, summoning the person named therein to personally appear before the municipal court at a time specified therein, and said summons shall contain a brief description of the offense with which the defendant is charged, but the ordinance alleged to have been violated need not be set out, in haec verba, and the summons shall issue without affidavit. (1981 Code, § 1-531)

3-305. Failure of accused to appear for trial--ex parte. On failure of any person, firm, or corporation to appear before the judge of the municipal court as commanded in a summons, traffic ticket or warrant, the cause may be proceeded with ex parte, and the judgment of the court shall be valid and binding. In the event the defendant failing to appear has made a deposit or forfeit, it shall be the duty of the city judge, upon the defendant's failure to appear, to declare said deposit or forfeit forfeited, and same shall be paid into the city treasury. (1981 Code, § 1-538, modified)

3-306. Collection of delinquent fines and costs by a collection agency. (1) As provided in Tennessee Code Annotated, § 40-24-105(d), the city is authorized to contract with one or more collection agencies to collect delinquent city court fines, costs and litigation taxes that have not been collected within sixty (60) days after they were due.

(2) Any contract between the city and a collection agency must be in writing and shall provide for collection of the collection agency's services fee in addition to amounts owed to the city.

(3) This section shall also apply to fines and costs imposed for citations issued for violations of traffic signal and speeding laws recorded by red light cameras, in accordance with Tennessee Code Annotated, § 55-8-198, Citations Based on Surveillance Cameras and Ordinance 2009-22, as such ordinance may be amended from time to time. (as added by Ord. #2010-03, March 2010)

CHAPTER 4

WARRANTS, SUMMONSES AND SUBPOENAS

SECTION

- 3-401. Court's issuance of criminals warrants.
 3-402. Form and content of summons.
 3-403. Officer to serve process and make return.

3-401. Court's issuance of criminal warrants. Whenever, on any person being brought before the judge of said court without warrant having been previously issued, it appears that reasonable cause exists for believing that a criminal offense or misdemeanor against the state has been committed, a warrant charging the offense shall be issued, and the municipal judge shall not try the case but bind the defendant over to the state, and if the defendant's charge is bailable, take bond in such sum as now prescribed by law for the offense charged for his appearance from day to day before the court in charge of or impaneling the grand jury, pending an investigation of said offense by said grand jury. However, if the offense charged is a misdemeanor against the state and the defendant executes the waiver as set forth in § 3-108 of this code, then the municipal judge shall proceed to try the case as set forth in § 3-108 and Tennessee Code Annotated, § 40-1-109. (1981 Code, § 1-516)

3-402. Form and content of summons. The summons shall be in the following form, to-wit:

STATE OF TENNESSEE
 City of Millington

To the police officer of the City of Millington.

GREETINGS:

You are hereby commanded to summon _____, if to be found within the City of Millington, personally to be and appear before the judge of the municipal court of the City of Millington, at _____ o'clock, _____.M., on the _____ day of _____, 19____, at the place where such court may be lawfully held in the City of Millington, in an action for a penalty for violation of an ordinance alleged to have occurred on the _____ day of _____, 19____, by _____.

Herein fail not, and have you then and there this writ.

WITNESS _____ (Clerk of Judge) this
 ____ day of _____, 19____. (1981 Code, § 1-532)

3-403. Officer to serve process and make return. The officer to whom the summons is directed shall serve the same in the manner now provided by law for the service of civil process, and shall make return by the time prescribed in said writ. (1981 Code, § 1-533)

CHAPTER 5

BONDS AND APPEALS

SECTION

3-501. No appeal when fine and costs less than ten dollars.

3-502. Bond required for appeal.

3-503. Solvent sureties on appeal bond required.

3-504. Cash bond may be deposited.

3-505. Cash bond to be returned upon acquittal or accused.

3-501. No appeal when fine and costs less than ten dollars. In all city cases an appeal may be taken to such circuit court of Shelby County as now may be provided by law, but no appeal shall lie from a judgment of said court unless the judgment be for a fine of more than ten dollars (\$10.00) and costs; and provided further that no fines may be remitted except upon the vote of the board of mayor and aldermen. (1981 Code, § 1-524)

3-502. Bond required for appeal. Any person convicted in the municipal court of the City of Millington shall, upon appeal or other proceeding taking such case to the circuit court, give bond, with approved surety, in the amount of two hundred fifty dollars (\$250.00), conditioned that if the fine imposed by said court is not paid the defendant will surrender himself to the police authorities to be dealt with as other offenders whose fines are not paid, and the judgment of the circuit court shall, in addition to imposing the fine if the defendant is convicted before it, order that such defendant be re-arrested upon his failure to pay such fine and costs and turned over to the police authorities to be dealt with as other offenders found guilty before the municipal court of the City of Millington. (1981 Code, § 1-525)

3-503. Solvent sureties on appeal bond required. Each bond given to appeal any cause from the municipal court shall be executed by a corporate surety duly authorized and qualified to transact such business in the State of Tennessee or two (2) individual sureties, each of whom shall take an oath before the clerk of said court that he, or she, owns in his, or her, own right, in fee simple, and unencumbered, real estate situated in Shelby County, Tennessee, and of stated value over and above all exemptions allowed by law sufficient to secure payment of the judgment and costs awarded against the defendant in the circuit court.

The municipal court clerk shall investigate the title and value of property scheduled and the amount of contingent liability against each piece of property scheduled, and if insufficient for any reason it shall be his duty to refuse the bond. (1981 Code, § 1-526)

3-504. Cash bond may be deposited. Whenever any person is charged with the violation of any city ordinances he may, in lieu of an appearance bond, deposit such sum as may now be fixed by law, with the clerk of the municipal court, or, in his absence, with the chief of police or any captain of police on watch, and on the appearance of such person before the municipal court at the time prescribed by law, such deposit shall be returned to him. On the failure of such person to appear at the time specified, the amount so deposited shall be forfeited to the City of Millington and he shall not be entitled to the return of any part thereof, and no scire facias or other process need be issued to make such forfeiture final; provided, however, that within two days of the declaration of the forfeiture the judge of the municipal court shall have the power to set such forfeiture aside, when it shall be made to appear that the failure of the accused to appear and defend his suit was due to no fault or negligence of the accused. After the expiration of two days the declaration of forfeiture shall be final, as hereinbefore provided for. (1981 Code, § 1-529)

3-505. Cash bond to be returned upon acquittal of accused. Whenever any defendant upon arrest has posted a cash forfeit, and after the hearing of said case the defendant shall be entitled to the return of said cash forfeit or any part thereof, the clerk shall have no authority to refund or release said sum to any person other than the defendant, in which event the clerk shall be required to take a receipt from the defendant for the amount refunded and said release shall be preserved for the inspection of the city auditor and any other person designated by the Board of Mayor and Aldermen of the City of Millington. (1981 Code, § 1-530)