

ORDINANCE NO. 2081 -2024

AN ORDINANCE ESTABLISHING A CODE OF PROCEDURE FOR THE MUNICIPAL COURT OF THE CITY OF GARDEN CITY, KANSAS BY PROVIDING A PROCEDURE FOR SECURING THE APPEARANCE OF PERSONS BEFORE SAID COURT BY USE OF CERTAIN APPEARANCE BONDS AND CONDITIONS OF RELEASE, BY PROVIDING A PROCEDURE FOR REVOKING THE SAME, AND BY PROVIDING A PROCEDURE RELATING TO APPEALS FROM SAID COURT; CREATING NEW CODE CHAPTER 99 ENTITLED "MUNICIPAL COURT" OF LIKE TITLE AND SUBJECT MATTER; CREATING NEW CODE ARTICLES I AND II OF CODE CHAPTER 99 ENTITLED "IN GENERAL" AND "BOND PROCEDURE", RESPECTIVELY, OF LIKE TITLE AND SUBJECT MATTER; CREATING NEW CODE SECTIONS 99-01 THROUGH 99-60; ALL TO THE CODE OF ORDINANCES, CITY OF GARDEN CITY, KANSAS; AND REPEALING RESOLUTION NOS. 2660-2016 AND 2769-2018.

WHEREAS, the governing body of the City of Garden City, Kansas ("Governing Body") passed Resolution No. 2660-2016 on July 19, 2016 establishing a procedure for the release of individuals who were arrested on non-warrant arrests for violations of the Code of Ordinances, City of Garden City, Kansas ("Code"), which shall be herein referred to as the "OR Bond Policy"; and

WHEREAS, the Governing Body authorized the Garden City Police Department ("GCPD") and the municipal court of the City ("Municipal Court") to administer the OR Bond Policy; and

WHEREAS, the OR Bond Policy required the individuals to be released on own recognizance bonds, also known as a personal recognizance bond, without requiring them to post a cash bond or corporate surety bond; and

WHEREAS, the OR Bond Policy required the individuals to be released as soon as practical after booking or after serving a six-hour hold, which required an individual to serve a period of up to six (6) hours in jail if a law enforcement officer made an individualized determination that: (a) the individual should spend a short period of time in jail in order to become sober enough to no longer pose a danger to themselves or others and to become sober enough to understand their obligations to the Municipal Court upon release; or (b) the individual should spend a short period of time in jail in order to cool down or in order to allow the alleged victim enough time to make arrangements to ensure their safety; and

WHEREAS, the OR Bond Policy required a no contact condition as a condition of release on own recognizance bonds for certain violations of the Code, which prohibited the individual from having contact with an alleged victim if the individual was arrested for domestic battery, battery, assault, or any other ordinance violation involving an offense against a person, threat against a person, or bodily harm to a person; and

WHEREAS, in the event of such contact, the OR Bond Policy authorized the GCPD to immediately revoke the individual's own recognizance bond, arrest the individual, and hold the individual in the Finney County Jail until such time that the individual could be seen by the judge of the Municipal Court ("Municipal Judge") for a bond hearing; and

WHEREAS, after implementation of the OR Bond Policy, the GCPD, the Municipal Court, and the general public experienced issues with individuals committing new violations of the Code shortly after being released from custody and with individuals committing multiple violations while the underlying case is still pending; and

WHEREAS, as a response to those issues, the Governing Body passed Resolution No. 2769-2018 on December 18, 2018 to repeal Resolution No. 2660-2016 and to provide supplemental bonding procedures that required a no new law violations condition as a condition of release on all own recognizance bonds granted pursuant to the OR Bond Policy, which prohibited the individual from committing and being arrested for a new violation of the Code while the own recognizance bond was still active; and

WHEREAS, in the event of such arrest, the OR Bond Policy authorized the GCPD to immediately revoke the individual's own recognizance bond, arrest the individual, and hold the individual in the Finney County Jail until such time that the individual could be seen by the Municipal Judge for a bond hearing; and

WHEREAS, the Governing Body has found that the OR Bond Policy, even with no new law violation conditions, has not prevented recidivism to the satisfaction of the GCPD, the Municipal Court, and the general public and that, although effective against some recidivism, there still persists a frequency of individuals committing new violations shortly after being released from custody and committing multiple violations during the pendency of the case; and

WHEREAS, the Governing Body desires to alleviate these issues by creating a new bond policy as further set forth in this ordinance in order to replace the OR Bond Policy and to repeal Resolution Nos. 2660-2016 and 2769-2018 in their entirety; and

WHEREAS, the new bond policy set forth in this ordinance complies with the recommendations set forth in the report titled as Ad Hoc Committee Report on Bonding Practices, Fines and Fees in Municipal Courts, which was prepared by the Ad Hoc Committee created pursuant to Supreme Court Order 2017 SC 87 of the Supreme Court of the State of Kansas under date of September 6, 2017 and titled as Re: Ad Hoc Committee on Bonding Practices, Fines, and Fees in Municipal Courts; and

WHEREAS, the Governing Body further desires that any such policy also clarifies that any bonds issued by the Municipal Judge at sentencing, as part of informing a defendant of their appeal rights, shall be considered as jurisdictional appearance bonds issued pursuant to K.S.A. 22-3609 and shall not be considered as non-jurisdictional appeal bonds issued pursuant to K.S.A. 12-4602.

BE IT ORDAINED by the Governing Body of the City of Garden City, Kansas:

SECTION 1. The Code of Ordinances, City of Garden City, Kansas, is hereby amended by adding a chapter, to be numbered 99, which said chapter reads as follows:

Chapter 99 – MUNICIPAL COURT

Article I. – IN GENERAL

Sec. 99-1. – Definitions.

(a) **DEFINITIONS.** The following terms for purposes of this Chapter shall be defined as follows:

- (1) *Municipal Judge* – The judge appointed by the Governing Body to preside over the Municipal Court. The term “Municipal Judge” shall exclude any attorney who is designated or selected to serve as *judge pro tempore*.
- (2) *Termination by Resolution* – The termination of the appearance bond due to each charge in all cases covered under the bond being resolved by dismissal, by entering into diversion, or by the imposition of a sentence.

Secs. 99-2—99-30. – Reserved.

Article II. – BOND PROCEDURE

Sec. 99-31. – Appearance Bonds for Initial Arrests.

- (a) **GENERAL RULE – CASH BOND REQUIRED.** Upon the person's initial arrest and after completion of the booking process, any person who is arrested on a non-warrant arrest for an ordinance violation under this Code shall, given an opportunity to be released from custody by executing and posting an appearance bond that is secured by the payment of cash and by no other method of securing the person's appearance, except as may be authorized by subsections (b), (c), or (d). The amount of cash required to be posted for any such cash bond shall be determined pursuant to subsection (g). Any such cash bond shall be conditioned upon any conditions of release that may be required by subsection (h). Any such cash bond shall be in the form prescribed by subsection (k).
- (b) **EXCEPTION – POVERTY AFFIDAVIT.** Notwithstanding subsection (a), any person who is authorized to be released on a cash bond pursuant to subsection (a) and who notifies a law enforcement officer of the Garden City Police Department that the person is unable to post such bond due to their indigency shall be offered the opportunity to complete and execute a poverty affidavit pursuant to this subsection. Any fully completed and executed poverty affidavit received by a law enforcement officer of the Garden City Police Department shall be sent to the Municipal Judge or *judge pro tempore* for review no longer than eighteen (18) hours after the time of such person's arrest. Upon receipt of any such poverty affidavit, the Municipal Judge or *judge pro tempore* shall: (1) determine whether the poverty affidavit necessitates a bond modification; and (2) be authorized to reduce the amount of cash required to be posted for any cash bond or to change the method used to secure the person's appearance from a cash bond to a corporate surety bond or personal recognizance bond. Any such bond modification shall not be effective unless executed by a Municipal Judge or *judge pro tempore* on the form prescribed by subsection (k). In the event that the Municipal Judge or *judge pro tempore* modifies the bond to a corporate surety bond or personal recognizance bond, the judge shall impose any conditions of release that may be required by subsection (h). In making any such modification, the Municipal Judge or *judge pro tempore* shall have no authority to remove any conditions of release that may be required by subsection (h). Nothing in this subsection shall require the Municipal Judge or *judge pro tempore* to consult with the person who completed the affidavit or to consider any information other than what is effectively communicated in the poverty affidavit.
- (c) **EXCEPTION – MEDICAL RELEASE.** Notwithstanding subsection (a), any person who is authorized to be released on a cash bond pursuant to subsection (a) may be released from custody for any medical reason at the request of any law enforcement officer of the Garden City Police Department, but only upon the condition that the Garden City Police Department has received or attempted to obtain the consent for such release from the department head of the Municipal Court or, in the event that such person is unavailable, from the City Attorney or Assistant City Attorney.
- (d) **EXCEPTION – JUDICIAL RELEASE.** Notwithstanding subsection (a), any person who is authorized to be released on a cash bond pursuant to subsection (a) may be released from custody upon the order of the Municipal Judge or *judge pro tempore* for good cause.

- (e) **AUTOMATIC PERSONAL RECOGNIZANCE BOND AFTER 48 HOURS.** Any person who is authorized to be released on a cash bond or corporate surety bond pursuant to this section and who is unable to post such bond within forty-eight (48) hours after the time of such person's arrest shall be given an opportunity to be released from custody by executing and posting a personal recognizance bond, but only upon the condition that the bond is conditioned upon any conditions of release that may be required by subsection (h).
- (f) **REFUSAL OR INABILITY TO COOPERATE.** Any person who is authorized to be released on any appearance bond pursuant to this section and who fails, refuses, or is unable to fully complete and execute the bond shall be held in the Finney County Jail until such time that: (1) the person fully completes and executes such bond; or (2) the person can be brought before the Municipal Judge or *judge pro tempore* during a regularly scheduled court setting wherein the person shall be eligible for release upon any appearance bond and conditions of release required by the Municipal Judge or *judge pro tempore*, in the sole discretion thereof, except that the judge shall impose any conditions of release that may be required by subsection (h).
- (g) **BOND SCHEDULE.** The City shall prepare a bond schedule to be used to set the standard amount of cash required to be posted for any cash bond authorized pursuant to subsection (a). Any such bond schedule shall, at a minimum, list the minimum fine respectively set forth in this Code or approved by the Municipal Judge for each ordinance violation under this Code for which a potential jail sentence could be imposed. Any approved bond schedule may be amended at the sole discretion of the City, without notice to the general public or to the Governing Body. No such bond schedule or any amendment thereto shall be effective until executed by the Municipal Judge.
- (h) **CONDITIONS OF RELEASE.** Any appearance bond posted pursuant to this section shall impose the following conditions of release, if applicable:
- (1) **NO NEW LAW VIOLATIONS CONDITION.** For any person who is arrested and charged with any ordinance violation, a condition of release to have no new law violations shall be imposed on any bond posted by such person. Such condition shall take effect on the date and time that the bond is executed by such person and shall remain in effect up to and until the bond is terminated pursuant to subsection (i), unless the Municipal Court specifically orders the removal of such condition at an earlier time. Any arrest of such person that meets each of the following requirements shall constitute a violation of this condition, shall subject the bond to revocation pursuant to subsection (j), and may result in the person being charged with a violation of Section 62-20, and amendments thereto:
- (A) The arrest was for any ordinance violation for which a potential jail sentence could be imposed or was for any crime for which a potential jail sentence could be imposed;
- (B) The arrest occurred subsequent to the time in which the condition was imposed on the person;
- (C) The arrest occurred during the time in which the condition was still in effect; and
- (D) The arrest occurred within the corporate limits of the City.

- (2) **NO CONTACT CONDITION.** For any person who is arrested and charged with the ordinance violation of domestic battery, battery, assault, or any other ordinance violation that includes an offense against a person, threat against a person, or bodily harm to a person, a condition of release to have no contact with the alleged victim or victims thereof shall be imposed on any bond posted by such person. Such condition shall take effect on the date and time that the bond is executed by such person and shall remain in effect up to and until the bond is terminated pursuant to subsection (i), unless the Municipal Court specifically orders the removal of such condition at an earlier time. Any of the following actions by such person shall, regardless of whether such action occurred within the corporate limits of the City, constitute a violation of this condition, shall subject the bond to revocation pursuant to subsection (j), and may result in the person being charged with a violation of Section 62-20, and amendments thereto:
- (A) Any contact with any such victim in any manner whatsoever, either directly or indirectly, but only upon the conditions that any such contact occurred subsequent to the time in which the condition of release was imposed on the person and occurred during the time in which the condition was still in effect;
 - (B) Entering or coming on or around the premises, residence, or workplace where any such victim resides, stays, or works, unless the person subject to the condition is accompanied by a law enforcement officer who has agreed to conduct a civil standby, but only upon the conditions that any such entering or coming on or around occurred subsequent to the time in which the condition of release was imposed on the person and occurred during the time in which the condition was still in effect; or
 - (C) Abusing, molesting, or interfering with the privacy or rights of any such victim, wherever they may be, but only upon the conditions that any such abuse, molestation, or interference occurred subsequent to the time in which the condition of release was imposed on the person and occurred during the time in which the condition was still in effect.
- (i) **TERM; TERMINATION.** Any appearance bond posted pursuant to this section shall continue until and shall be terminated upon the earliest of: (1) the bond being Terminated by Resolution; or (2) the bond being revoked pursuant to subsection (j). Any appearance bond posted pursuant to this section shall in no way be construed as a bond ordered pursuant to K.S.A. 12-4602 or K.S.A. 22-3609, and amendments thereto.
- (j) **REVOCAION.** Any appearance bond posted pursuant to this section may be revoked as follows:
- (1) **FAILURE TO APPEAR.** In the event that a person who posted such bond fails to appear before the Municipal Court as directed or referenced in the bond, the Municipal Judge or *judge pro tempore* may revoke the bond through the issuance of a warrant for the arrest of such person. Any such warrant may be issued to include any single case or multiple cases as follows: (A) the warrant may be issued in a single wherein the warrant covers only that particular case; or (b) the warrant may be issued in a single case wherein the warrant covers that particular case and also covers any number of other cases, so long as the person is a defendant in each case covered under the warrant. In addition thereto, any such person may be charged with a violation of Section 62-4, and amendments thereto. In the event that a revocation

pursuant to this subsection occurs prior to the bond being Terminated by Resolution, any condition of release imposed pursuant to subsection (h) shall survive any such revocation and shall remain in full force and effect against such person until a subsequent appearance bond is posted imposing the same conditions of release.

- (2) **VIOLATION OF CONDITION OF RELEASE.** In the event that a person who posted such bond violates any condition of release imposed pursuant to subsection (h), any law enforcement officer of the Garden City Police Department may revoke the bond and may immediately remand such person to the custody of the Finney County Jail. Any such person shall: (A) be held in the Finney County Jail until such time that the person can be brought before the Municipal Judge or *judge pro tempore* during a regularly scheduled court setting; and (B) be eligible for release upon any appearance bond and conditions of release required by the Municipal Judge or *judge pro tempore*, in the sole discretion thereof, except that the judge shall impose any conditions of release that may be required by subsection (h). In the event that a revocation pursuant to this subsection occurs prior to the bond being Terminated by Resolution, any condition of release imposed pursuant to subsection (h) shall survive any such revocation and shall remain in full force and effect against the person until a subsequent appearance bond is posted imposing the same conditions of release.

- (k) **USE OF FORMS.** Any appearance bond or poverty affidavit authorized pursuant to this section shall be in a standard form document that is prescribed or otherwise approved by the City, with the consent of the City Attorney or Assistant City Attorney, for such purpose. Any such form shall respectively comply with each of the following requirements:

(1) **SPECIAL REQUIREMENTS – APPEARANCE BONDS.**

- (A) Any such appearance bond shall contain, in clearly readable print, a notice that substantially complies with the following language:

“IF YOU ARE UNABLE TO POST A CASH BOND DUE TO YOUR INDIGENCY, then you must notify a law enforcement officer of the Garden City Police Department that you are requesting a bond modification based on your indigency. You will then be required to fully complete and execute a Poverty Affidavit that will be sent to a judge of the Municipal Court for review in order to determine whether the statements contained in the Poverty Affidavit necessitate a bond modification. A decision on your bond modification will be made by the judge within eighteen (18) hours of your arrest. Your failure to fully complete and execute the Poverty Affidavit will result in your bond modification being denied.”

(2) **SPECIAL REQUIREMENTS – POVERTY AFFIDAVIT.**

- (A) Any such poverty affidavit shall be signed, whether physically or by electronic means, by the affiant as an unsworn declaration under the penalty of perjury pursuant to K.S.A. 53-601, and amendments thereto.

- (l) **ADMINISTRATION.** Any law enforcement officer of the Garden City Police Department shall be authorized to execute, enforce, and administer the provisions set forth by the section.

Secs. 99-32—99-33. – Reserved.

Sec. 99-34. – Appearance Bonds for Appeals.

- (a) Any bond that the Municipal Judge or *judge pro tempore* requires to be posted by a convicted person for appeal to the District Court of Finney County, Kansas shall, regardless of form and content, constitute and be construed as an appearance bond ordered pursuant to K.S.A. 22-3609, and amendments thereto, and shall in no way be construed as: (1) an appeal bond ordered pursuant to K.S.A. 12-4602, and amendments thereto; or (2) the continuation of any appearance bond authorized pursuant to Section 99-31.

Secs. 99-35—99-60. – Reserved.

SECTION 2. REPEAL. Resolution Nos. 2660-2016 and 2769-2018, as previously existing and amended, be and the same are hereby repealed, to be replaced with this ordinance.

SECTION 3. FURTHER ACTION. The Mayor, City Clerk, and other officials and employees of the City, including the City Attorney and Assistant City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate to accomplish the purposes of this ordinance.

SECTION 4. SEVERABILITY. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 5. EFFECTIVE DATE; PUBLICATION. This ordinance shall be in full force and effect from and after May 1, 2024 and following its publication, or a publication of a summary thereof, in the Garden City Telegram, the official city newspaper.

APPROVED AND PASSED by the Governing Body of the City of Garden City, Kansas, the 16th day of April, 2024.



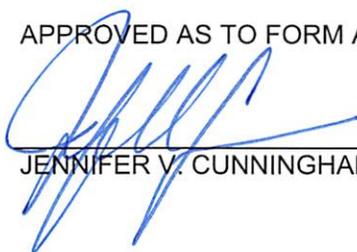

MANUEL F. ORTIZ, Mayor

ATTEST:



CELYN N. HURTADO, City Clerk
KORI A. LONGORIA, Deputy City Clerk

APPROVED AS TO FORM AND CONTENT:



JENNIFER V. CUNNINGHAM, City Attorney