

11-16-06

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**ORDINANCE NO. 492**

**AN ORDINANCE CREATING A MUNICIPAL COURT PROCEDURE FOR  
INDIGENT DEFENDANTS**

**WHEREAS**, K.S.A. 12-4405 requires the Judge of the Basehor Municipal Court to appoint legal counsel to a Basehor Municipal Court Defendant when it appears to the Judge that if the accused person is found guilty of the alleged offense that he or she may be deprived of his or her liberty and if the accused person is not financially able to employ counsel then the Municipal Judge shall appoint an attorney to represent the accused person; and

**WHEREAS**, the City of Basehor, Kansas, does not currently have a Municipal Policy establishing a fund to pay for the legal fees incurred under such process; and

**WHEREAS**, the City of Basehor does not have a formal Policy in terms of the procedure to appoint legal counsel to represent such Indigent Defendants; and

**WHEREAS**, it is in the best interest in the City of Basehor to establish a formal procedure by Ordinance for the appointment of legal counsel to represent Indigent Defendants and to establish the amount of fees to be paid on behalf of such Indigent Defendants.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR,  
KANSAS;**

**Section 1:** The Municipal Judge shall have the authority to appoint an attorney for Indigent Defendants in accordance with the United States and the State of Kansas Constitutions. Before such an appointment, the Municipal Judge shall make a finding of Indigence in accordance with the standards established by the Kansas Supreme Court for the appointment of an attorney.

(a) The Municipal Judge shall prepare and file in the office of the clerk of the Municipal Court a list of attorneys who are eligible for assignment to represent Indigent persons accused of municipal offenses.

(b) In all cases pending before the Municipal Court in which the defendant is subject to a sentence of a term of incarceration, the Municipal Judge presiding at the Defendant's first appearance shall advise the Defendant, if he or she appears without counsel, that he or she is entitled to counsel unless Defendant waives such entitlement, and that counsel will be appointed to represent the Defendant if it is determined that the Defendant is not financially able to employ an attorney.

(c) If it is determined that the Defendant is not able to employ counsel the Court shall appoint an attorney, unless the Defendant waives his or her right to counsel, from the list provided or at the option of the Court, may appoint counsel as provided for in subsection (k) hereof.

(d) If, after the attorney's appointment, the attorney learns that the Defendant has funds or other resources sufficient to enable the Defendant to employ counsel, or that the City Attorney has filed a written determination with the Court that a sentence of incarceration will not be sought should the Defendant be found guilty of the pending charge or charges, as provided herein, the attorney shall so advise the Court and ask permission to withdraw from the case or to be permitted to accept the compensation from the Defendant for services.

(e) When any Defendant who is entitled to have the assistance of counsel claims to be financially unable to employ counsel, the Court shall require that the Defendant file an Affidavit containing such information and in the form adopted by the Judge. The Court may interrogate the Defendant under oath as to the contents of the Affidavit; may require the Defendant to produce evidence upon the issue of the Defendant's financial condition; and may require the City attorney, a city law enforcement officer or other municipal Court employee to investigate and report upon the financial condition of the Defendant.

(f) Upon the basis of the information provided for by subsection (e) of this section, the Court shall determine whether the Defendant is financially unable to employ counsel. In making such determination, the Court shall consider the Defendant's assets and income; the amount needed to support the Defendant and the Defendant's immediate family; the anticipated cost of effective representation by employed counsel and any property conveyed by the Defendant without adequate monetary consideration after commission of the alleged offense. If the Defendant's assets and income are not sufficient to cover the anticipated costs of making effective representation by employed counsel taking into account the nature of the proceedings, the Defendant shall be determined indigent in full or in part and the Court shall appoint an attorney as provided in subsection (c) of this section. If the Court determines that the Defendant is financially able to employ counsel, or that the City Attorney has filed a written determination with the Court that a sentence of incarceration will not be sought should the Defendant be found guilty of the pending charge or charges, as provided herein, the Court shall so advise the Defendant and shall give the Defendant a reasonable opportunity to employ an attorney of the Defendant's own choosing.

(g) The Court shall inform the Defendant for whom counsel is appointed that the amount expended by the City in providing counsel and other defense services may be entered as a Judgment against the Defendant if the Defendant is convicted and found to be financially able to pay the amount, and that an action to recover such amount may be brought against any person to whom the Defendant may have transferred or conveyed any of the Defendant's property without adequate monetary consideration after the date of the commission of the alleged crime. A determination by the Court that the Defendant is financially unable to employ counsel or pay other costs or the Defendant's defense may

preclude a recovery from the Defendant but may not preclude recovery from any person to whom the Defendant may have transferred any property without adequate monetary consideration after the date of the commission of the alleged crime.

(h) The determination that a Defendant is indigent shall be subject to review at any time by the Court.

(i) An attorney who performs services as provided in this section shall be entitled to compensation at the conclusion of such services. Claims for compensations shall be certified by the claimant and shall be reviewed and approved by the Judge of the Municipal Court before whom the services were performed. Each claim shall be supported by a written statement specifying in detail the time expended, the services rendered, the expenses incurred, and any other compensation or reimbursement received. Upon review and approval by the Judge of the Municipal Court, each claim for compensation shall be submitted to the Clerk of the Municipal Court, who shall then submit to the City Council for payment.

(j) A fee schedule is established for the determination of the amount of compensation to be paid to Court-Appointed counsel in Municipal Court; the fee schedule shall be as follows:

- (1) \$100.00 for a case in which the Defendant obtains diversion or enters a plea to any charge;
- (2) \$150.00 for a case in which the Defendant's case is tried to the Court;
- (3) \$250.00 for a case in which a guilty finding is appealed to the District Court and tried.

(k) In lieu of appointing an attorney from a list of attorneys as provided for in subsection (c) and compensating such appointed attorney as provided for above, the Court may contract with an eligible attorney or attorneys to provide a defense for all Defendants in Municipal Court who are determined to be Indigent and where no conflict exists which would preclude representation by an attorney or attorneys. Any contract entered into by the Court for purposes of providing counsel to Indigent Defendants shall be subject to budget limitations as established by the governing body of the City. Selection of attorneys to represent Indigent Defendants by contract shall be made in a manner that complies with City Administrative Provisions.

(l) The City Treasurer shall create an Indigent fund in which to accumulate funds to pay to attorneys appointed pursuant to this Ordinance. The City Treasurer shall transfer the sum of Three Hundred Dollars (\$300.00) per month into said fund to provide for payment pursuant to this Ordinance.

Passed by the Governing Body this 1st day of May, 2006.

*Chris Garcia*

Chris Garcia, Mayor



Attest:

*Mary Ann Mogle*  
Mary Ann Mogle, City Clerk