

2.28 - Municipal Court

Chapter 2.28 - MUNICIPAL COURT

ARTICLE I. ESTABLISHMENT AND ORGANIZATION

- 2.28.010 Definitions.
- 2.28.020 Applicability
- 2.28.030 Municipal court established.
- 2.28.040 Powers of the municipal court.
- 2.28.050 Municipal judge qualifications.

ARTICLE II. PROCEDURE

- 2.28.060 Conflicts in rules of procedure.
- 2.28.070 Procedures for juvenile offenders.
- 2.28.080 Violation of city law--Commencement of action.
- 2.28.090 Complaint, summons, warrant and subpoena procedures.
- 2.28.100 Attendance of witnesses.
- 2.28.110 Delivery of summons or subpoena--Penalty for failure to appear.
- 2.28.120 Form of summons--Defects and objections.
- 2.28.130 Bond Procedure for arrested persons.
- 2.28.140 Bond Forfeiture conditions.
- 2.28.150 Bond Proceedings following forfeiture--Liability of surety.
- 2.28.160 Failure to appear.
- 2.28.170 Sessions open to the public--Exceptions.
- 2.28.180 Defendant's rights.
- 2.28.190 Continuance of cases--Conditions.
- 2.28.200 Imprisonment or payment of fines.
- 2.28.210 Sentence suspension.
- 2.28.220 Stay of execution.
- 2.28.230 Court costs.
- 2.28.240 Fines paid to city finance department.
- 2.28.245 Surcharge designated.

ARTICLE III. TRIAL BY JURY

- 2.28.250 Right to trial by jury.
- 2.28.260 Municipal judge hearing when.
- 2.28.270 Jurors Qualifications and exemptions.
- 2.28.280 Jurors Method of summoning.
- 2.28.290 Jury not to be quashed for certain irregularities.
- 2.28.300 Instruction to jury.
- 2.28.310 Jury fees--Designated.
- 2.28.320 Jury trial--Filing of demand--Jury fee--Costs.
- 2.28.330 Jurors Failure to appear Penalty.
- 2.28.340 Verdict and sentencing.

ARTICLE I. ESTABLISHMENT AND ORGANIZATION

2.28.010 Definitions. As used in this chapter:

- A. "Municipal court" means a "qualified Municipal Court of record" as defined in Title 13, Article 10, Section 102 of the Colorado Revised Statutes, and as created under Chapter V of the Home Rule Charter of the city.
- B. "Municipal judge" means and includes the presiding municipal judge and all assistant municipal judges, unless the context of it requires otherwise. (Ord. 164-02: 360-77)

2.28.020 Applicability. This chapter shall apply to and govern the operation of the municipal court of the city. (Ord.

2.28 - Municipal Court

Published on City of Evans Colorado (<http://www.cityofevans.org>)

164-02: 360-77)

2.28.030 Municipal court established. A municipal court in and for the city is created and established. (Ord. 164-02: 360-77)

2.28.040 Powers of the municipal court. A. The municipal judge shall have all judicial powers relating to the operation of the municipal court, subject to any rules of procedure governing the operation and conduct of the municipal court promulgated by the Colorado Supreme Court, the Home Rule Charter of the city, and the statutes of the State of Colorado, and:

1. May impose fines and jail sentences as authorized by the Home Rule Charter and the city code of ordinances and may require useful public service, driving school, alcohol or drug classes or rehabilitation, or counseling or therapy and other similar or alternative sentences;
 2. May administer oaths, and punish contempts of court by fine or imprisonment;
 3. May issue search warrants as authorized by law;
 4. May summons and compel the attendance of jurors and may impose a fine or jail sentence on the failure to so attend;
 5. May pass upon the competency of evidence;
 6. May render final judgment on any forfeited bond or recognizance returnable to the municipal court.
- B. The municipal judge shall require that all proceedings and evidence presented within the municipal court of the city shall be recorded verbatim by either electric devices or stenographic means. (Ord. 164-02: 782-91: 360-77)

2.28.050 Municipal judge qualifications. A municipal judge shall be an attorney admitted to practice law in the state of Colorado. (Ord. 164-02: 360-77)

ARTICLE II. PROCEDURE

2.28.060 Conflicts in rules of procedure. Any rules of procedure contained herein, or promulgated by the municipal judge, that conflict with the Rules of Procedure for Municipal Courts, as promulgated by the Supreme Court of the state of Colorado shall be invalid and of no force and effect. (Ord. 164-02: 239-72)

2.28.070 Procedures for juvenile offenders. The judge of the Municipal Court may promulgate such rules or orders regarding the procedural processing of minor offenders appearing before the Municipal Court as the judge may, from time to time, deem appropriate. (Ord. 164-02: 875-93)

2.28.080 Violation of city law--Commencement of action. An action for the violation of any ordinance of the city shall be brought in the name of the people of the state of Colorado as plaintiff against the person who is alleged to have violated the ordinances as defendant, and shall be commenced by the filing of a complaint or by the issuance of a summons or citation, or by both summons and a complaint. Each act or series of related acts committed by the same person, constituting a violation of any of the provisions of this code, may be consolidated for the purpose of filing a complaint, issuing and serving summons and subpoenas, trial and appeal, but the judge shall impose a separate fine or penalty for each offense of which the defendant is convicted. (Ord. 164-02: 239-72)

2.28.090 Complaint, summons, warrant and subpoena procedures. A. Every complaint or summons shall state the name of the defendant, the number of the chapter and section alleged to have been violated, the type of offense to which each of such sections relates, the date and place of each alleged violation, that the defendant is known or believed to have committed such offense, and that the defendant is required to appear to answer the charge on a date and at a time and place designated in the complaint or summons. The complaint or summons, except as provided herein, shall be signed by the person alleging the violation, and the complaint shall be verified by the complainant unless he is a police officer, a code enforcement officer for code enforcement complaints only (such as, but not limited to weeds, trash accumulation, inoperable vehicles or animal control) or a member of the personnel of the court acting in his official capacity. Each warrant shall state the name of the defendant, the section and chapter alleged to have been violated, the date and place of the alleged violation, and that the defendant is alleged to have committed the offense. Each subpoena shall state the name of the case, the name of the witness to whom the subpoena is directed, and that the witness is required to appear to give testimony on the date and at the time and place stated in the subpoena.

B. It shall be sufficient to charge a violation of the provisions of this code in any summons or complaint by reference to the section and subsection, if any, providing for such violation.

C. Upon the filing of a verified complaint by a person not a police officer, code enforcement officer, or a member of the personnel of the court acting in his official capacity, the judge, court clerk or any authorized agent of the court

2.28 - Municipal Court

Published on City of Evans Colorado (<http://www.cityofevans.org>)

may issue a summons, or the judge may issue a warrant against the defendant named in the complaint. (Ord. 164-02: 239-72)

2.28.100 Attendance of witnesses. The defendant and the city shall be entitled to compel the attendance of any witnesses, subject to the jurisdiction of the municipal court. Upon a written request to the municipal court for the attendance of a witness or witnesses subject to the jurisdiction of the court, the court or clerk shall cause to be served upon such witness a subpoena compelling his attendance at a given time in the municipal court for the purpose of giving testimony. (Ord. 164-02: 239-72)

2.28.110 Delivery of summons or subpoena--Penalty for failure to appear. A. Any summons or subpoena issued in accordance with this chapter shall be served in any case by any police officer or code enforcement officer for code enforcement complaints only (such as, but not limited to weeds, trash accumulation, inoperable vehicles or animal control) in the city, or in any particular case by any person specifically designated by the court for that purpose.

B. Any person who fails to appear in response to any summons or subpoena served on him or her or in the case of a juvenile defendant, a parent or guardian who has signed a promise to appear in court, shall be guilty of a violation of this chapter, and upon conviction shall be fined in an amount not exceeding one thousand dollars (\$1,000.00) or by imprisonment, as provided under Chapter 1.16, not exceeding one (1) year, or by both such fine and imprisonment. (Ord. 185-02: 164-02: 842-92: 239-72)

2.28.120 Form of summons--Defects and objections. No objection to the form of any summons or complaint shall be considered by the court because of any defect, unless such objection was made by the defendant prior to trial of the case on its merits; but trial of the case on its merits shall not waive any objection theretofore made. (Ord. 164-02: 239-72)

2.28.130 Bond--Procedure for arrested persons. Every person arrested for a violation of the provisions of this code shall have the right to be taken before a municipal court, or a judge thereof, or the chief of police, or a police officer designated by the chief of police and to be admitted to bail on executing a cash surety or recognizance bond conditioned that he will appear on a day and hour therein mentioned, before the municipal court and not depart the court, which bond shall be in an amount adjudged sufficient by the judge or officer to insure the appearance of the defendant. Such bond shall be approved by one of the judges of the municipal court, and an entry of the filing thereof shall be made in the court docket. (Ord. 164-02: 239-72)

2.28.140 Bond--Forfeiture conditions. If any defendant in a case before the municipal court of the city fails to appear according to the terms, requirements and conditions of his bond for appearance, or appearing shall depart the court without leave, the bond shall automatically be forfeited. (Ord. 164-02: 239-72)

2.28.150 Bond Proceedings following forfeiture--Liability of surety. A. Where a surety bond is forfeited, the surety on the bond shall pay the amount of the bond into the municipal court upon the date of forfeiture. If the judgment is not vacated and payment is not made by the 120th day after forfeiture, the court shall place the agent's name on the Board Master List. If agent's name is on the board for 30 days, the court shall send notice to the bail insurance company by certified mail. The insurance company will have 15 days from the date of mailing to satisfy the judgment. If judgment not satisfied within 15 days, the court shall place the bail insurance company on the board. If an insurance company is on the board for 15 days, the court shall order the Division of Insurance to take administrative action against the company.

B. If the judgment is not vacated and payment is not made by the 120th day after forfeiture, the court shall place the agent's name on the Board Master List. If agent's name is on the board for 30 days, the court shall send notice to the bail insurance company by certified mail. The insurance company will have 15 days from the date of mailing to satisfy the judgment. If judgment is not satisfied within 15 days, the court shall place the bail insurance company on the board. If an insurance company is on the board for 15 days, the court shall order the Division of Insurance to take administrative action against the company. (Ord. 164-02: 239-72)

2.28.160 Failure to appear. When any defendant, duly summoned or admitted to bail, or in the case of a juvenile defendant, a parent or guardian who has signed a promise to appear in court, fails to appear at the time his case is made returnable or set for trial, the municipal judge may issue a warrant for the arrest of the defendant or parent or guardian, or the municipal judge may hear and examine the testimony offered on the part of the city and may render judgment thereupon by default against the defendant or PARENT OR GUARDIAN, and in such amount under the provisions of this code as the court may deem just. (Ord. 185-02: 164-02: 239-72)

2.28 - Municipal Court

Published on City of Evans Colorado (<http://www.cityofevans.org>)

2.28.170 Sessions open to the public--Exceptions. All cases in municipal court shall be open to the public; provided, however, that where the type of offense charged and the nature of the case are such that it would be in the best interests of the witnesses and/or defendant to exclude all persons not directly connected with the case, the municipal judge may order that the court be cleared of all persons not so directly connected with the case, except qualified representatives of news agencies. This decision shall be solely in the discretion of the municipal judge. (Ord. 164-02: 239-72)

2.28.180 Defendant's rights. At the beginning of each court session, the municipal judge shall explain to defendants their rights in municipal court, provided, however, that this may be done by pamphlet distributed to each defendant. (Ord. 164-02: 239-72)

2.28.190 Continuance of cases--Conditions. A person who is duly summoned, who cannot be tried on account of the absence of witnesses or for any other good and sufficient cause, may request in open court a continuance of his case. The municipal judge may continue the matter upon terms set by him. Additional continuances may be granted upon application of the defendant or his attorney. However, in no case shall the total continuances exceed thirty days, unless it appears to the municipal judge that extreme hardship will result. Where a person on appearance is on bond and a continuance is requested, the municipal judge shall have the power to continue the bond for the period of continuance. Nothing herein shall affect the right of the City Attorney to request a continuance. (Ord. 164-02: 239-72)

2.28.200 Imprisonment or payment of fines. In accordance with state law, the court shall have power in all cases of conviction when any fine is imposed to order that the offender be committed to jail there to remain until such fine and costs are fully paid or otherwise legally discharged. Such costs shall mean the docket fee, witness fees, mileage fees, costs of service of process and juror fees. Whenever it is made to appear satisfactorily to the Municipal Judge, after all legal means have been exhausted, that any person who is confined for any fine or costs of prosecution for any ordinance offense has no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of the Municipal Judge to discharge such person from further imprisonment for such fine and costs, which discharge shall operate as a complete release of such fine and costs; provided that nothing in the Section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he may be sentenced to be imprisoned as part of his or her punishment. (Ord. 164-02: 239-72)

2.28.210 Sentence suspension. The municipal judge is authorized to suspend the payment of any fine, or any part thereof, assessed for a violation of this code or any ordinance, and he may suspend all or any part of any jail sentence imposed for such a violation. He may impose reasonable conditions upon such suspension, and revoke such suspension and reinstate the sentence for a violation of such condition. (Ord. 164-02: 239-72)

2.28.220 Stay of execution. In the discretion of the municipal judge, a stay of execution may be granted to enable a defendant, on good cause, to pay a fine or penalty at a later date or in installments. There shall be no charge for the first stay, which may be granted for up to one month. For each extension of time requested thereafter by a defendant, there shall be imposed a ten dollar administrative charge. In the event that a defendant does not meet the terms of the stay of execution as required by the court, then in that event the court may impose an additional penalty in the form of either a fine or jail sentence or both. (Ord. 164-02: 782-91: 239-72)

2.28.230 Court costs.

A. Municipal Court costs shall be levied against any person who pleads guilty or nolo contendere, or who enters into a plea agreement or who, after trial, is found guilty of an ordinance violation. Such cost is established by city council by resolution.

B. Where any person, association or corporation is convicted of an offense, the court shall give judgment in favor of the city and against the offender for the amount of Court costs and any fine imposed. Court costs shall not be suspended by the Municipal Judge.

C. The costs assessed pursuant to subsection (B) of this section may include, within the Municipal Court Judge's discretion:

1. The surcharge required by Section 2.28.245 of this code or any other fee or tax required by ordinance to be paid to the clerk of the court;
2. The jury fee required by Section 2.28.320 of this code;
3. Any fees of the court reporter for all or any part of a transcript necessarily obtained for use in the case;
4. The witness fees and mileage paid pursuant to this chapter;
5. Any fees for exemplification and copies of papers necessarily obtained for use in the case;
6. Any costs of taking depositions for the preservation of testimony, including reporters fees, witness fees, expert

2.28 - Municipal Court

Published on City of Evans Colorado (<http://www.cityofevans.org>)

witness fees, mileage for witnesses and sheriff fees for the service of subpoenas;

7. Any statutory fees for service of process or statutory fees for any required publications;

8. Any fees for interpreters;

9. Any item specifically authorized by ordinance to be included as part of the costs;

10. On proper motion of the prosecuting attorney, and at the discretion of the court, any other reasonable and necessary costs incurred by the prosecuting attorney which are directly the result of the prosecution of the defendant.

D. Costs imposed pursuant to this section are in addition to any other fees imposed by the court. (Ord. 164-02: 876-93)

2.28.240 Fines paid to city finance department. All fines or other moneys due in the municipal court for the violation of this code or any of the ordinances of the city shall be paid to the finance department. (Ord. 164-02: 239-72)

2.28.245 Surcharge designated. In addition to any court costs or other costs imposed by this section, there shall be assessed a Municipal Court surcharge. The Municipal Court has authority to collect such surcharge from each defendant who is found liable for a traffic infraction, or is guilty or pleads guilty or no contest in the Municipal Court. Such surcharge is established by City Council by resolution. (Ord. 436-08: 164-02: 937-94: 842-92: 766-90)

ARTICLE III. TRIAL BY JURY

2.28.250 Right to trial by jury. In any action before the municipal court in which the defendant is charged with a violation of a municipal ordinance punishable by imprisonment, such defendant shall have a jury trial upon request unless the City Attorney or Prosecutor waives the imposition of a jail sentence and the Court approves the waiver. The jury shall consist of three jurors unless a greater number, not exceeding six, is requested by the defendant. Any action before the municipal court in which the defendant is charged with a municipal ordinance violation not punishable by imprisonment shall be tried to the court. Traffic offenses punishable by imprisonment are defined in Chapter 10.04. (Ord. 164-02: 837-92: 239-72)

2.28.260 Municipal judge hearing when. If any defendant pleads guilty or waives his right to a jury trial, or fails to demand a jury trial, the municipal judge shall hear the evidence and render a judgment thereon. (Ord. 164-02: 239-72)

2.28.270 Jurors--Qualifications and exemptions. Qualifications and exemptions of jurors shall be the same as provided in Colorado Revised Statutes. (Ord. 164-02: 239-72)

2.28.280 Jurors--Method of summoning. Upon demand of the defendant for trial by jury jurors shall be summoned from a jury list. (Ord. 164-02: 239-72)

2.28.290 Jury not to be quashed for certain irregularities. No array or panel of any jury shall be quashed, nor shall any verdict be stayed or averted by reason of any informality or irregularity in the summoning or selecting of the jury which, in the opinion of the court, is unimportant and insufficient to vitiate the return of the jury. (Ord. 164-02: 239-72)

2.28.300 Instruction to jury. At the conclusion of all of the evidence, and before arguments of counsel, the judge shall read to the jury the ordinance or code section alleged to have been violated by the defendant, and shall orally instruct the jury as to any points of law that the judge believes to be pertinent to the issues to be determined by the jury. Counsel for either of the parties may submit written instructions to the judge, and if he believes such instructions to be proper, he may read the same to the jury. (Ord. 164-02: 239-72)

2.28.310 Jury fees--Designated. Persons summoned to jury duty pursuant to this chapter shall be entitled to a juror's fee per day or part of a day for which they are summoned, and the defendant shall in all cases wherein demand for trial by jury is made, tender to the municipal court sufficient juror's fees to pay for the number of jurors requested, plus six additional jurors. Such fee is established by city council by resolution. (Ord. 164-02: 239-72)

2.28.320 Jury trial--Filing of demand--Jury fee--Costs. For the purpose of this chapter a defendant waives his right to a jury trial under Section 2.28.250 unless, within ten (10) days after arraignment or entry of a plea, he files with the court a written jury demand, stating therein the number of jurors requested, and at the same time tenders to the court a jury fee to begin the jury selection process, unless the fee is waived by the judge because of the

2.28 - Municipal Court

Published on City of Evans Colorado (<http://www.cityofevans.org>)

indigence of the defendant. Such fee is established by city council by resolution. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the court at least fourteen days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. If, in the fourteen days before the scheduled trial date (including the day of trial), the defendant waives his right to trial by jury, pleads guilty or no contest to the charge, pleads guilty to a substituted charge, or fails to appear, the defendant shall pay the actual costs of summoning the jury and jury fees. The clerk of the municipal court shall compute the costs and fees, applying the jury fee tendered by the defendant, and the court shall assess the balance to the defendant. (Ord. 164-02; Ord. 876-93: 239-72)

2.28.330 Jurors--Failure to appear--Penalty. If any person summoned as a juror fails, neglects or refuses to appear, without reasonable excuse, he shall be deemed guilty of contempt, and fined or imprisoned as the court may direct. The court shall have the power to issue a citation directed to the chief of police commanding him forthwith to bring such court the body of such juror so failing to attend, and for such juror to show cause why he should not be punished for contempt; or, on the appearance of such juror on such citation, it shall be lawful for the court to punish him for contempt or wholly discharge him if satisfactory excuse is made. (Ord. 164-02: 239-72)

2.28.340 Verdict and sentencing. Upon a jury returning a verdict of guilty, the judge shall record the same and shall proceed to fix or determine the punishment, penalty or sentence, and to render judgment upon such verdict for the punishment, penalty or sentence so determined by him; but if the jury returns a verdict of not guilty, the defendant shall be discharged. (Ord. 164-02: 239-72)

Code Documents



[2.28 - Municipal Court](#)

Source URL (retrieved on *Wed, May 16th 7:48am*):

<http://www.cityofevans.org/municipalcode/228-municipal-court>