

ORDINANCE NO. 187

AN ORDINANCE SETTING FORTH THE SALARY OF THE MUNICIPAL JUDGE FOR THE CITY OF CREEDE; REPEALING ALL OTHER ORDINANCES AND SECTIONS OF ORDINANCES IN CONFLICT THEREWITH.

BE IT ORDAINED by the Board of Trustees of the City of Creede, a Town in Mineral County, Colorado:

Section 5-4-1 The Municipal Judge for the City of Creede, a Town located in Mineral County, Colorado, shall receive the sum of \$20.00 per month as salary for services as Municipal Judge.

INTRODUCED, read in full, passed and approved at a regular meeting of the Board of Trustees of the City of Creede, a Town, this 6th day of March, A.D. 1972.

APPROVED:



Mayor

ATTEST:



City Clerk

ORDINANCE NO. 187

AN ORDINANCE FOR THE CREATION, COMPOSITION PROCEDURE AND JURISDICTION OF THE MUNICIPAL COURT OF THE TOWN OF CREEDE, COLORADO, AND REPEALING ALL OTHER ORDINANCES AND SECTIONS OF ORDINANCES IN CONFLICT THEREWITH.

CHAPTER V MUNICIPAL COURT

SECTION 1 CREATION, COMPOSITION AND JURISDICTION

5-1-1	Definitions	5-1- 9	Ex-Officio Clerk
5-1-2	Municipal Court Created	5-1-10	Acting Municipal Judge
5-1-3	Appropriations	5-1-11	Jurisdiction and Powers of Court
5-1-4	Municipal Judge, Appointment	5-1-12	Examine Complaints; File Reports
5-1-5	Qualification	5-1-13	Sessions of Court
5-1-6	Oath and Bond	5-1-14	Hours
5-1-7	Salary	5-1-15	Traffic Cases Separately
5-1-8	Presiding Judge's Powers		

5-1-1 Definitions As used in this article the following terms shall have the following meanings:

(1) Municipal Court The term "municipal court" shall mean police magistrate's court or police court.

(2) Municipal Judge The term "municipal judge" shall mean police magistrate or police judge.

5-1-2 Municipal Court Created A municipal court in and for the Town of Creede, Colorado is hereby created and established.

5-1-3 Appropriations The Board of Trustees shall annually appropriate an amount sufficient to pay the salary of the Town Attorney's office, the clerical help, office help, office expense and expense of supplies necessary to carry out the provisions of this ordinance.

5-1-4 Municipal Judge, Appointment The court shall be presided over by a presiding Municipal Judge, appointed by the Board for an indefinite term, or until a successor is appointed and duly qualified. The Municipal Judge shall perform no other duties during the hours that Court is in session except such as may be approved by the Board on motion or resolution. The Board may appoint additional judges from time to time as may be needed to transact the business of the court or to preside in the absence of the presiding judge. The presiding judge shall supervise and direct the court's operations. Any Municipal Judge may be removed by the Board for cause. C.R.S. 139-86-4 (1963)

5-1-5 Qualification The Board may, by ordinance or resolution duly considered and adopted, establish from time to time such qualifications for the office of Municipal Judge as it may deem fit and proper and consistent with the procurement of persons of judicial temperament and ability.

5-1-6 Oath and Bond Before entering upon the duties of his office the Municipal Judge shall take and subscribe, before a judge of a court of record, and file with the Board an oath or affirmation that he will support

the Constitution of the United States and the Constitution and Laws of the State of Colorado and the ordinances of the Town of Creede, Colorado and will faithfully perform the duties of his office. Said Municipal Judge shall give bond to the Town in the amount of \$2,000.00 which shall be approved by the Board and be conditioned on the faithful performance of the duties of the office of the Municipal Judge, and for the faithful accounting for the payment of all monies coming into his hands by virtue of said office.

5-1-7 Salary The annual salary of the Municipal Judge shall be set by the Board, and payable as other salaries to municipal employees. The Board shall from time to time budget and appropriate monies necessary for the compensation of the Municipal Judge.

5-1-8 Presiding Judge's Powers The presiding Municipal Judge shall have full power and authority to make and adopt rules and regulations for conducting the business of the municipal court. Such rules and regulations shall be reduced to writing.

5-1-9 Ex-Officio Clerk The Judge shall also be Ex-Officio Clerk of the court unless a separate Clerk of the municipal court shall have been appointed by the Judge by and with the consent of the Board.

5-1-10 Acting Municipal Judge In case of the temporary absence, sickness or other inability of the Municipal Judge to act, the Mayor may appoint some competent person to act as such Municipal Judge until the disability of the Municipal Judge is removed. Such appointment must be in writing.

5-1-11 Jurisdiction and Powers of Court The Municipal Court shall have original jurisdiction of all cases arising under this Code and other ordinances of the Town, with full power to carry the same into effect and to punish violations thereof by the imposition of such fines and penalties as in such ordinances provided; it shall have power to compel attendance of witnesses and to punish for contempt of such court by fine, not to exceed one hundred dollars, (\$100.00), or by jail sentence not to exceed five (5) days, and shall have all powers incident to a court of record in relation to same.

5-1-12 Examine Complaints; File Reports The Municipal Judge shall receive and examine affidavits and complaints, at all times, for the violation of any Town ordinance, and shall issue a summons or warrant in every case where there is probable cause to believe that an offense has been committed. He shall file monthly reports with the Town Clerk of all monies collected by him, either in the way of fines or otherwise, and shall on the last day of each month pay to the Town Treasurer all monies in his hands; the reports shall state the number of cases filed in his court, how the same were disposed of, and other matters of information concerning his office.

5-1-13 Sessions of Court There shall be regular sessions of court for the trial of cases and the Municipal Judge shall hear and determine complaints for the violation of any Town ordinance where there is probable cause to believe that an offense has been committed; provided, however, it shall be

lawful for said Municipal Judge to hold a special session of court at any time, including Sundays, holidays and night court, if in the descretion of the Judge a special session is deemed advisable.

5-1-14 Hours The court shall be open during such hours as are set by the Municipal Judge with the consent and approval of the Board, including such night sessions as the Board shall approve. In case of any conflict between the Municipal Judge and the Board as to said hours, the decision of the Board shall govern. The municipal court shall be closed on Sundays and holidays except for special sessions.

5-1-15 Traffic Cases Separately Insofar as it is practicable, traffic cases shall be heard separately from other cases. Where traffic cases and other cases are set for the same court session, traffic cases shall be heard first.

SECTION 2 PROCEDURE

- 5-2- 1 Rules of Procedure
- 5-2- 2 Commencement of Action
- 5-2- 3 Content of Complaint or Summons; Warrant; Subpoena
- 5-2- 4 Witnesses
- 5-2- 5 Deliverance of Summons or Subpoena
- 5-2- 6 Defects and Objections as to Form of Summons
- 5-2- 7 Bond May be Given
- 5-2- 8 Forfeiture of Bond
- 5-2- 9 Surety Liable; Proceedings Commenced
- 5-2-10 Default
- 5-2-11 Sessions Open to Public; Exceptions
- 5-2-12 Explanation of Defendant's Rights
- 5-2-13 Continuance
- 5-2-14 Execution
- 5-2-15 Prisoners Required to Labor for the Town
- 5-2-16 Stay
- 5-2-17 Persons in Custody
- 5-2-18 Sentence Suspended
- 5-2-19 Fines Paid to Town Treasurer

5-2-1 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.

5-2-2 Commencement of Action An action for the violation of any ordinance of the Town 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. C.R.S. 139-26-1 (1963)

187

5-2-3 Content of Complaint or Summons; Warrant; Subpoena

(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 said 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 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.R.S. 139-86-3 (1963)

(c) Upon the filing of a verified complaint by a person not a police 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 may issue a summons, or the Judge may issue a warrant against the defendant named in the complaint.

5-2-4 Witnesses The defendant and the Town of Creede, Colorado 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 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. All witnesses shall be entitled to a fee of one dollar and fifty cents (\$1.50) per day, and such witness fees shall be paid by the party requesting the attendance of the witness and taxed as costs of the suit.

5-2-5 Deliverance of Summons or Subpoena

(a) Any summons or subpoena issued in accordance with this chapter shall be served in any case by any police officer in the Town or in any particular case by any person specifically designated by the court for that purpose.

(b) Any person who shall fail to appear in response to any summons or subpoena served on him shall be guilty of a violation of this chapter and upon conviction shall be fined in an amount of not more than three hundred dollars (\$300.00) or imprisoned for a period not exceeding ninety (90) days, or by both such fine and imprisonment.

5-2-6 Defects and Objections as to Form of Summons 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.

187

5-2-7 Bond May be Given 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 his executing a such 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 said 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.

5-2-8 Forfeiture of Bond In case any defendant in any case before the municipal court of the Town shall fail to appear according to the terms, requirement and conditions of his bond for appearance or appearing shall depart the court without leave, the bond shall automatically be forfeited.

5-2-9 Surety Liable; Proceedings Commenced where a surety bond is forfeited, the surety on said bond shall pay the amount of the bond into the municipal court upon the date of forfeiture. Failure of surety to satisfy a bond forfeiture shall result in proceedings being instituted in a court of competent jurisdiction in the name and on behalf of the Town for recovery of the penalty of such bond named. The surety shall have the right to apply to the municipal court, in open court, within thirty (30) days from the date of forfeiture for a return of the whole or a part of the bond amount paid to the municipal court. Said application shall be in writing and shall be supported by affidavit setting forth the grounds for the demand. If good cause is shown by the surety for the return of the whole or a part of the bond amount, the Municipal Judge shall in open court, order the return of the surety of the amount determined by the Municipal Judge to be due surety. The surety shall have the right to institute a claim against the Town in a court of competent jurisdiction for recovery of any bond payment believed to be wrongfully held.

5-2-10 Default When any defendant, duly summoned or admitted to bail, 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 the Municipal Judge may hear and examine the testimony offered on the part of the Town and may render judgment thereupon by default against the defendant, and in such amount under the provisions of this Code as the court may deem just.

5-2-11 Session Open to 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 to the best interest 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.

187

5-2-12 Explanation of Defendant's Rights At the beginning of each court session the Municipal Judge shall explain to defendants their rights in municipal court, as well as the order of trial, provided, however, that this may be done by pamphlet distributed to each defendant.

5-2-13 Continuance 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 (30) 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 a period of the continuance. Nothing herein shall affect the right of the Town Attorney to request a continuance.

5-2-14 Execution Every person against whom any fine or penalty shall be assessed under the laws of the Town, who shall refuse or neglect to pay the same when demanded, may be committed in default thereof to the Town or County Jail or such other enclosure as may from time to time be designated by the Board as a lawful place for the detention of Town prisoners, under the direction of the proper officers, until the said fine and penalty is fully paid and said satisfaction to be allowed at the rate of three dollars (\$3.00) per day of twenty-four hours, or as in accordance with state law. Any such person may be required to do any reasonable work; provided, however, that no single term of imprisonment shall exceed ninety (90) days. The municipal court shall discharge such person from further imprisonment for such fine when it shall be made satisfactorily to appear to the Judge that such person has no estate whatever wherewith to pay such fine C.R.S. 139-86-2 (1963); C.R.S. 39-10-9 (1963)

5-2-15 Prisoners Required to Labor for the Town Every person committed to the Town jail for the violation of this Code or any other ordinance of the Town shall be required, when ordered so to do by the Chief of Police, to work for the Town at such labor as may be designated by the Mayor, either within or without the jail, not exceeding eight (8) hours a day as his strength will permit. C.R.S. 139-86-2 (1963)

5-2-16 Stay In the discretion of the Municipal Judge a stay of execution may be granted to enable the defendant to pay the fine or penalty at a later date or in installments. In case the defendant shall not have met the terms of the stay of execution, then the execution shall issue and the defendant shall be placed in jail until said judgment is satisfied.

5-2-17 Persons in Custody A person in custody who cannot be tried on account of the absence of witnesses or other cause and who cannot give bail for his appearance, may be confined to the Town jail not exceeding three (3) days, and in such case the Judge shall deliver to the officer committing such person a commitment stating the cause of the detention.

187

5-2-18 Sentence Suspended The Municipal Judge is hereby 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 conditions.

5-2-19 Fines Paid to Town Treasurer All fines or other monies collected in the municipal court for the violation of this Code or any of the ordinances of the town shall be reported by the Judge and paid to the Town Treasurer each month.

SECTION 3 TRIAL BY JURY

- 5-3-1 Demand for Jury
- 5-3-2 Qualifications and Exemptions of Jurors
- 5-3-3 Method of Summoning Jurors
- 5-3-4 Juror Failing to Appear-penalty
- 5-3-5 Jury fees
- 5-3-6 Waiver of Jury Fees
- 5-3-7 Discharge of Jurors
- 5-3-8 Challenge for Cause; Peremptory
- 5-3-9 Panel of Jury Not to be Quashed etc., for Irregularity
- 5-3-10 Juror Not to be Disqualified for Opinion
- 5-3-11 Trial to Court
- 5-3-12 Instructions to Jury
- 5-3-13 Jury Verdict - Sentence

5-3-1 Demand for Jury In all trials for a violation of this Code or any ordinance of the Town, a defendant shall have the right to demand a trial by jury. Such defendant may demand a jury which shall consist of six (6) jurors, or a lesser number not fewer than three (3), if the same be agreed upon by the Town and the defendant, the Judge adjourning the cause, if necessary, to any time not exceeding three (3) days, for that purpose. The jury, when empaneled, shall be sworn by the Judge to try the cause according to the evidence and the law as provided for in criminal trials. C.R.S. 139-63-1 (1963)

5-3-2 Qualifications and Exemptions of Jurors Qualifications and exemptions of jurors shall be the same as provided in Colorado Revised Statutes, 1963, Chapter 78, Sections 78-1-1 to 78-1-9, as amended.

5-3-3 Method of Summoning Jurors Upon demand of the defendant for trial by jury, the said municipal court or Judge thereof shall issue a venire for the jury and shall issue his writ to any police officer or marshall which shall be substantially in the following form:

State of Colorado)
) ss:
 Town of _____)
 THE PEOPLE OF THE TOWN OF _____, STATE OF COLORADO, TO
 _____ GREETING:

1877

We command you to summon _____ persons of your county who are residents of the Town of _____ to appear before me at _____ on the day of _____, 19____, who are not of kin to _____, defendant, to make a jury between the People of the Town of _____, State of Colorado, and the said defendant in a plea of not guilty to a charge of a violation of one or more ordinances of the Town; because the said defendant has demanded trial by jury; and have you then and there the names of the jury, and this writ.

Witness my hand and seal, this ___ day of ___, 19__.

(SEAL)

Judge of the Municipal Court

5-3-4 Juror Failing to Appear - Penalty If any person summoned as a juror shall fail, neglect, or refuse 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 before 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 be made.

5-3-5 Jury Fees Persons summoned to jury duty pursuant to this ordinance shall be entitled to a juror's fee of three dollars (\$3.00) 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 (6) additional jurors.

5-3-6 Waiver of Jury Fees Whenever it shall be made satisfactorily to appear to the Municipal Judge, after all legal means have been exhausted, that any person who is charged with a violation of an ordinance and who requests a jury as herein provided, has no estate whatever wherewith to pay jury fees in advance as required it shall be the duty of the Municipal Judge to waive the requirement for advance payment, provided if the defendant is found guilty he shall be assessed the jury fees as part of the court costs

5-3-7 Discharge of Jurors The term of jury service shall be as indicated on the venire facias, and a person who has actually been in attendance as a juror in the municipal court as ordered under the venire facias for the period of time ordered under the venire facias shall be discharged by the court. No juror shall be discharged until the close of the trial in which he may be serving, and if the selection of the jury in any cause has been begun, the court shall have the power to retain the panel until such jury is selected and sworn. A person discharged as prescribed in this section shall be disqualified for jury service in the municipal court for the period of one (1) year thereafter.

187

5-3-8 Challenge for Cause; Peremptory Challenges for cause shall be as provided for in Colorado Revised Statutes, 1963, Chapter 78, and all cases arising under this Code or any ordinance of the Town wherein a jury is demanded, each party shall be entitled to three (3) peremptory challenges.

5-3-9 Panel of Jury Not to be Quashed, etc., for Irregularity 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.

5-3-10 Juror Not to be Disqualified for Opinion No person summoned as a juror shall be disqualified to serve as such by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused; provided, however, that the court shall be satisfied, from the examination of the juror or from other evidence, that he will render an impartial verdict, according to the law and the evidence submitted to the jury in the trial of such cause.

5-3-11 Trial Court 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.

5-3-12 Instructions 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.

5-3-13 Jury Verdict - Sentence 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.