

ORDINANCE NO. 9.

An Ordinance in Relation to the Mayor and His Duties.

Be it Ordained by the Board of Aldermen of the City of St. Mary, as follows:

SEC. 1. Mayor to Prevent Offenses, etc.—The Mayor, when he has good cause to believe that an offense has been or is about to be committed against law or ordinance, may summon and examine witnesses in relation thereto, and, upon proper affidavit, may issue a warrant for the apprehension of any offender against law or ordinance, which warrant shall be returnable before the mayor and shall be tried as provided by ordinance for trials in the mayor's court.

SEC. 2. The Mayor Shall Have Supervision of City Affairs, etc.—The mayor shall have a general supervision and control over all city officers, and may, whenever he shall see fit, examine into the condition of their respective offices, the books, papers and records therein, the manner of conducting their official business, and may call upon any officer, clerk or deputy for information in relation to any matter pertaining to his office.

SEC. 3. Mayor to Report to Board, etc.—The mayor shall report to the board of Aldermen all violations or neglect of duty, on the part of any city officer, which may come to his knowledge.

SEC. 4. Services of Process of Mayor, etc.—Whenever any process or notice shall be served on the mayor in any

legal or other proceeding against the city, or in which the city is a party, he shall immediately deliver the same, or a sufficient note thereof, to the city attorney, in order that the same may be attended to.

SEC. 5. Charges Against Mayor, etc.—Should charges of misbehavior in office at any time be preferred against the mayor the Board of Aldermen shall proceed at once to investigate and decide the same in the manner prescribed in other cases of a like kind; and should the mayor be, by the judgment of the Board of Aldermen, removed from office, a copy of the decision shall be filed in the office of the city clerk, and the president of the Board of Aldermen shall be *ex-officio* mayor for the time being, and until a successor is elected, and he shall issue a proclamation ordering an election to fill the vacancy in the office of mayor, caused by such removal, in the manner provided by the charter and ordinances of this city.

SEC. 6. Mayor's Court.—There shall be, and there is hereby established, a court in the city of St. Mary to be known as the Mayor's Court, which shall be held by the mayor or by the police judge, if there be one elected.

SEC. 7. Jurisdiction of said Court.—The said court shall have jurisdiction of all suits for the recovery of any fine, forfeiture or penalty, imposed for the violation or breach of any ordinance, which suits the proceedings therein, shall be in the nature of a civil action.

SEC. 8. Court to be Opened Daily -Exceptions.—There shall be a daily session of the mayor's court—Sundays, Christmas, New Year, Thanksgiving Day, the Fourth of July, Washington's Birthday, and Election Day, excepted—commencing at the hour of ten o'clock in the morning, and all the cases set for each day shall be tried on such day, provided there be a sufficient time between the hour set for the meeting of the court and sundown of the same day, except such cases as may be continued as hereinafter provided.

SEC. 9 Cases, How Tried.—All persons in the custody shall be tried first, if ready for trial; all other persons shall be tried in the order in which their names appear upon the docket.

SEC. 10. Of Bail.—Any person arrested for a violation of ordinance may be admitted to bail by executing a bond to the city with sufficient security, to be approved by the mayor, marshal, a deputy, the city clerk, or any two members of the board of Aldermen in the order named of not less than fifty dollars nor more than two hundred dollars, conditioned that said person will appear on a day therein mentioned, before

the Mayor's court, to await his trial of the charges against him; and all bonds taken as above shall be forthwith filed with the mayor by the officer approving and taking such bond.

SEC. 11. Of Recognizances.—If the defendant fail to appear according to the condition of his bond, or, appearing, shall leave the court without awaiting his trial, such bond shall be deemed forfeited, and the mayor shall cause the same to be prosecuted against the principal and surety, or against the surety alone. Such action shall be in the name of the city as plaintiff, and may be prosecuted before the mayor, and all the moneys recovered in such action shall be paid over to the city treasury, to the credit of the general fund of the city. Judgments rendered under this section may be appealed from to the circuit court in like manner and within the same time as appeals from justices are allowed in civil actions; provided, the forfeiture of any recognizance may be set aside on the appearance of the defendant or his being brought into court by his surities, within ten days from the judgment of forfeiture, and upon the payment of all costs that have accrued.

SEC. 12. Of the Complaint and its Requisites.—All suits in the mayor's courts, shall be in manner and form following: There shall be filed with the mayor, a statement, signed by the marshal or city attorney, or person acting in their stead, which statement shall be in form substantially as follows:

IN THE MAYOR'S COURT, CITY OF ST. MARY, A. D. 18..

The City of St. Mary Plaintiff.

vs.

.....Defendant.

Now comes,and on his oath complains of,

for the violation of section,of an ordinance of said city entitled, "An ordinance, etc., etc., etc.," approved the,day of,A. D., 18..and for cause of complaint alleges, that the said,at and in said city of St. Mary, on the day of,A. D., 18.. did then and there (here insert charges.)

(Signed).....

Subscribed and sworn to before me on this,day of,
A. D., 18..

The complaint when made by the marshal, assistant marshal or regular policeman, need not be in writing, if the

defendant be present in court and in custody, but in every other case the complaint shall be in writing and sworn to before the warrant be issued for the arrest of the defendant, and in no case shall a judgment of conviction be rendered, except upon sufficient legal testimony given on a public trial, or upon a plea of guilty made in open court.

SEC. 13. No Dismissal for Defects in Statement.—No suit shall be dismissed for any formal defects in the statement, if it substantially set forth the nature of the violation alleged.

SEC. 14. Proceedings When Statement Insufficient.—When any statement filed shall be adjudged insufficient, and the suit thereupon dismissed, the defendant, if arrested under a warrant, may at the discretion of the mayor, be detained in custody until a new statement and affidavit be filed and a new warrant be issued against him; provided that such detention does not exceed six hours.

SEC. 15. Proceedings on Filing Statements, etc.—Upon the statement being filed as provided in section 12, the mayor or person acting in his stead shall issue a warrant, reciting substantially the offense as charged in the statement and directed to the city marshal, the sheriff of the county, or any constable of the city. The officer to whom such warrant is delivered shall execute the same by arresting the defendant, and bringing him before the mayor, if such arrest is made during the hours of the sitting of court, and if at any other time by taking and holding the defendant in custody until the next meeting of court, in default of the bail required by section 10 of this ordinance.

SEC. 16. Of the Return of Warrant, etc.—Upon the return of the warrant by the officer executing the same, the mayor, or acting mayor, shall be fully possessed of the cause and shall proceed to hear and determine the same, and to that end shall issue subpoenas for witnesses and attachments and such other summary process as may be necessary to compel their attendance.

SEC. 17. Of the Venire, its Return, etc.—Upon a jury being demanded, the mayor shall issue his venire, returnable at the time the case may be set for trial; and if forthwith, the suit shall be put at the foot of the day's docket and the mayor shall immediately proceed to try the next suit in order.

SEC. 18. Proceedings When Marshal Incompetent to Summon Jury.—When the city marshal is of kin to the prosecutor, or defendant, in any suit, or the defendant shall

file an affidavit that the marshal is so prejudiced against him that justice may not be done in the selection of a jury, the mayor shall issue his venire to some disinterested person who, before executing the same, shall be sworn faithfully and impartially to execute it; and who shall, for its execution, receive the same compensation as is allowed to constables for the same service in the justice's courts.

SEC. 19. Jurors to be Sworn.—Jurors shall be sworn or affirmed to well and truly try the matter in issue, and a true verdict to render according to law and the evidence.

SEC. 20. When Separate Trial may be Demanded.—Persons jointly charged shall have a separate trial if they demand it before the trial is gone into, or before the jury be impanelled.

SEC. 21. The Verdict—Its Form.—The verdict of the jury shall be in either of the following forms, as near as may be: "We, the jury, find the defendant to be not guilty, as against him charged," or, "We, the jury, find the defendant to be guilty, as against him charged, and assess his punishment at the sum of dollars." The verdict in either case may be signed by one of the jurors acting as foreman.

SEC. 22. What the Verdict Shall Assess as Penalty.—If the jury find the defendant guilty, they shall assess the penalty, within the limits prescribed by ordinance, where the same is not specially fixed by ordinance at a given sum.

SEC. 23. Judgment Against Prosecutor, etc.—If, upon trial before the mayor, or if it appear to the satisfaction of said mayor that the prosecution was commenced without probable cause and from malicious motives, the court shall state the name of the prosecutor or complainant in the finding, and shall impose the cost of prosecution upon him, and judgment shall be rendered against such prosecutor or complainant, that he pay such cost and stand committed until the same are paid.

SEC. 24. When a Party may Dismiss Complaint.—Whenever any person (other than a city officer) shall have caused the arrest of another for a violation of ordinance, and the offense charged shall have affected solely or principally the person causing the arrest, the latter may withdraw the charge on payment of costs, when the case shall be called before the mayor's court.

SEC. 25. Officers to Attend as Witnesses Without Subpoena.—Officers shall attend as witnesses against persons

whom they shall have arrested, without being summoned, and if they fail to appear at the time of trial they may be attached and punished for contempt, as witnesses summoned.

SEC. 26. Fees of Witnesses.—All Witnesses.—All witnesses, (city officers and prosecutors excepted) duly summoned and attending at the trial, shall be entitled to fifty cents for each day's attendance, but they shall not charge for attendance in more than one suit on the same day, and every witness shall be deemed duly summoned who is sworn and duly testifies in any cause.

SEC. 27. Mayor May Remit Fine, etc.—The mayor may in his discretion, whenever in his opinion just or conducive of beneficial results, remit in whole or in part any fine, penalty or forfeiture assessed by him or any person officiating for him in the mayor's court, for breach of any ordinance, and may grant reprieves and pardons after conviction of any offense, and may attach any conditions to such remittance, reprieve or pardon as in his judgment would further the ends of justice.

SEC. 28. Continuances.—Whenever a suit is first called up for trial if either party be not ready, owing to the absence of witnesses material to the case, a continuance shall be granted by the mayor for one day, on the application of the party desiring it. If a continuance is wanted by either party for a longer time, the party making the application may be required to state under oath the materiality of such witness, and his name and residence, if known, whereupon a continuance may be granted for a period not exceeding ten days. If, upon the calling of the case at the time to which it shall have been continued, a second continuance is asked, the party applying therefor shall be required to make affidavit stating the materiality of the witness, what he expected to prove by him, and what means have been used to procure his attendance. If sufficient cause is shown in the judgment of the mayor, he shall grant a further continuance, not exceeding ten days; provided, that before such continuance shall be granted, the mayor shall require the defendant to enter into recognizance, with sufficient surety, conditioned that he will appear before said mayor at the time and place appointed, then and there to answer the complaint alleged against him; and if he fail or refuse to enter into such recognizance, the defendant shall be committed to prison and held to answer said complaint as aforesaid.

SEC. 29. Dilatory Motions, When to be Made.—All applications for continuances shall be made either at the

opening of the court in the morning of the day on which the case is set for trial, or when the suit is called up for trial, and at no other time, unless by permission of the mayor; and all motions for dismissal, on account of informality or illegality in the papers or proceedings, and all other motions in relation to matters which do not necessarily arise during the progress of the trial, and all pleas, except of "guilty," must be made and filed in writing, and argued when the case is called up for trial, and at no other time.

SEC. 30. Depositions.—Depositions taken in conformity to the laws of the State may be read in evidence before the mayor in any case where the witness is dead, or by reason of sickness, old age, or bodily infirmity, or absence from the city, is unable or cannot safely attend the trial; provided, that such absence is without collusion of the party offering the deposition.

SEC. 31. Notices and Process Against the City, Upon Whom Served.—All processes and notices which it may be necessary, in any suit before the mayor, to serve on the city shall be served on the city attorney, city clerk, or the person acting in their stead.

SEC. 32. The Mayor may Appoint Attorney to Prosecute Certain Cases.—In the absence of the city attorney, or person prosecuting in his stead, when any suit in which the city is plaintiff is about to be tried, the mayor may, if he deem it necessary, appoint some one to prosecute on behalf of the city, who shall, during the time he is so acting, possess all power vested in the city attorney.

SEC. 33. Appeals.—An appeal shall be allowed from the judgment of the mayor to the circuit court, in all cases, upon the party appellant complying with the provisions of section 1646 of the Revised Statutes of Missouri, 1889.

SEC. 34. Appeals by the City, How Made.—The city attorney, or person prosecuting in his stead, may take an appeal on behalf of the city from the judgment of the mayor; but the foregoing section shall not be so construed as to require of the city any bond or affidavit when it is the party appellant.

SEC. 35. The Mayor's Docket.—The mayor shall keep a docket in which he shall enter every cause commenced before him as mayor, and shall state in his docket the name of the complainant, the nature and character of the offense, the date of the trial, the names of all witnesses sworn and examined, the finding of the court, the judgment or fine and

costs, the date of the payment, the date of issuing commitment, if any, and each other fact necessary to show the full proceedings in every case, and upon appeal being perfected, he shall make out and certify to the said court a full transcript of the proceedings had in said suit.

SEC. 36. Fines Imposed, How Collected.—When any person or persons, who shall have been fined for violating any of the provisions of any ordinance of this city, shall fail or refuse to pay the fine and all costs, such person shall be imprisoned in the county jail or calaboose of the city for a period of not less than ten days, or, under the order of the Justice or Mayor, by whom the fine was assessed, shall be required to work on the streets, alleys, sidewalks, the city rock quarry, or other improvements of the city, under the direction of the city Marshal or Street Commissioner, at the rate of one dollar per day, until the fine and all the costs have been paid, including board of the prisoner until date of discharge.

SEC. 37. Duty of Marshal or Street Commissioner.—The City Marshal or Street Commissioner, shall have charge of all persons failing to pay the fine or fines assessed against them, and shall superintend all labor performed by such person or persons, as may fail or refuse to pay the fine or fines imposed on them as provided in the next preceding section.

SEC. 38. Costs to be Deposited in Certain Cases.—The Mayor when he is satisfied that a complaint or information of a violation of ordinance is made for vexation or without just cause, may, before commencing any proceeding, require the complainant or informant to deposit with the city marshal double the amount of costs that will in his judgment accrue in the suit; but the provision of this section shall not apply to any report, complaint or information made by any officer of the city in the discharge of his duty, and no such officer shall be liable for costs.

SEC. 39. Mayor to Commit for Contempt.—The mayor shall have power to enforce due obedience to all orders, rules, and judgments made by him, and may fine or imprison for contempt offered to such mayor while holding his court, or to process issued by him, in the same manner and to the same extent as the circuit court.

SEC. 40. Mayor and Marshal, How Governed in Absence of Ordinance.—The mayor and city marshal, in all matters pertaining to the duties of their respective offices concerning which there is no specific provisions by ordinance,

shall be governed by the law of the State of Missouri regulating proceedings in justice's courts and the duties of justices of the peace and constables, as far as the same may be applicable.

SEC. 41. Duty of Mayor in Relation to Costs.—It shall be the duty of the mayor to tax all costs in the mayor's court, to make out all fee-bills and executions; to make out and issue all processes of the court and sign the same as mayor; to make to the city clerk each month a statement of all the fee bills and executions returned to him satisfied by the city marshal during the preceding month; to furnish to the board of aldermen, at each regular session, a full statement of the amount of fines imposed, amount of fines and costs collected, and fines and costs collected by commitment to jail, and fines and costs outstanding since the commencement of the previous session, from his docket and other records of the court; and generally, when not otherwise prescribed by ordinance, the duties of the mayor shall be, as near as may be, the same as those required of the justices of the peace.

SEC. 42. Time Allowed for Appeal, etc.—In all cases before the mayor arising under the ordinances of the city, an appeal may be taken by the defendant to the proper court, but no such appeal shall be allowed unless the defendant, within ten days, shall enter into recognizance, with good and sufficient security, to be approved by the mayor, conditioned for the personal appearance of the appellant before the circuit court of the county, on the first day of the next term thereof, and for the payment of such fines and costs as shall be imposed upon him if the case shall be determined against the appellant.

SEC. 43. How Causes May be Removed from Mayor's Court.—If, upon the parties, on the return case, the defendant shall, before the jury is sworn or the trial submitted to the mayor, or any examination of the case gone into, make affidavit that the mayor before whom the same is pending is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, or that he is near of kin to the prosecutor, stating therein what degree, or believes that he (the defendant) cannot have a fair trial or examination before said mayor, where he is of kin to the defendant, shall, immediately, hand over to some justice in the city the original papers in the cause, and a transcript of his docket containing the entries made in the same, and such justice to whom any papers shall be transmitted shall proceed in such case as if the same had been originally instituted before him, but in no case shall a cause be removed a second time.

SEC. 44. Police Judge Elected, etc.—The Mayor and Board of Aldermen may, by ordinance, provide for the election of police judges in this city, who shall be elected at the regular city election, and shall, when so elected, have exclusive jurisdiction to hear and determine all offenses against the ordinances of this city: provided, that when such police judges shall be elected, then the jurisdiction in this article conferred on the mayor to hear and determine cases for the violation of city ordinances shall be held to refer to the police judge elected under this section; provided that in case of absence, sickness or disability in any wise of such police judge, or in case of vacancy in such office, the mayor shall perform all such duties until the disability is removed or the vacancy filled.

SEC. 45. This ordinance to take effect and be in force from and after its passage.

Passed and approved July 15th, 1892.

E. S. LAWBAUGH, Mayor.

Attest: H. G. ROSEMAN, City Clerk.