



18-O-1045

AN ORDINANCE BY

COUNCILMEMBER NATALYN MOSBY ARCHIBONG

AS SUBSTITUTED AND AMENDED BY THE ATLANTA CITY COUNCIL (2/05/18)

AMENDING CHAPTER 62 OF THE CITY OF ATLANTA CODE OF ORDINANCES, ENTITLED COURTS, IN ORDER TO ELIMINATE THE REQUIREMENT OF THE PAYMENT OF A CASH BOND TO SECURE RELEASE FROM THE CITY OF ATLANTA DETENTION CENTER FOLLOWING ARREST FOR CERTAIN NON-VIOLENT OFFENSES; AND FOR OTHER PURPOSES.

WHEREAS, the United States Supreme Court has recognized the fundamental right to pretrial liberty for defendants awaiting trial except in carefully limited exceptional circumstances (*United States v. Salerno*, 481 U.S. 739 (1987)); and

WHEREAS, by granting a right to bail in misdemeanor cases (O.C.G.A. §17-6-1(b)(1)), the General Assembly has recognized the high value that our society places on pre-trial liberty; and

WHEREAS, for persons under the jurisdiction of the Municipal Court of Atlanta charged with non-violent offenses, requiring cash bond as a condition of pre-trial release may result in the extended detention of individuals who lack the ability to pay; and

WHEREAS, the City of Atlanta wishes to ensure that persons arrested and booked into the custody of the Atlanta City Detention Center not remain in jail simply because they are unable to pay cash bond collateral; and

WHEREAS, for future arrestees charged solely with non-violent offenses, the City of Atlanta wishes to allow release from the Atlanta City Detention Center after booking, on a recognizance or signature bond; and

WHEREAS, in order to help ensure that defendants released on a recognizance or signature bond appear in Municipal Court, the City desires to authorize the public defender to provide indigent defendants with client-centered holistic representation; and

WHEREAS, it is the desire of the City of Atlanta to permit the acceptance of a cash bond following a hearing before a judge of the municipal court in cases in which the defendant has been charged with an offense containing an element of violence or threatened violence against persons, and under other limited circumstances and with the procedural protections as set forth in this ordinance; and

WHEREAS, any financial condition of pre-trial release set by the Municipal Court must take into account the defendant's ability to pay; and

WHEREAS, potential cost savings from reduced incarceration may enable the City to allocate additional resources to community-based programs that improve court appearance rates and enhance social services available upon a defendant's release; and

WHEREAS, the City of Atlanta supports the reallocation of resources which have been provided to the Municipal Court for the scheduling of a docket to take place after regular court hours and



on weekends to ensure that where necessary, defendants may have a bond hearing within 24 hours if possible, or otherwise with minimal delay; and

WHEREAS, accordingly, the City of Atlanta wishes to amend Chapter 62 of the City of Atlanta Code of Ordinances, to eliminate the requirement of the payment of a cash bond to secure pre-trial release from the Atlanta City Detention Center following arrest for non-violent offenses, as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:

SECTION 1: That Chapter 62, Article I, Section 62-1, (entitled “Bond clerk division; duties and authorities of bond clerk”), Subsections (c) and (h) of the City of Atlanta Code of Ordinances be amended so that they shall read as follows (with permanent additions in underline font and permanent deletions in strikethrough font):

Sec. 62-1. - Bond clerk division; duties and authorities of bond clerk.

(c) The Chief of Corrections shall not accept cash bonds on any offenses under the jurisdiction of the Atlanta Municipal Court except as set forth in Section 62-31 (b), (c), (d) and (f) of this Chapter. For the bail requirements of offenses under the jurisdiction of the Atlanta Municipal Court, the Corrections Chief shall implement the provisions of Section 62-31 (a), (b), (c), (d) and (f). ~~The Chief of Corrections or designated representative shall accept, within the sole discretion of the chief of corrections all appearance bonds and cash bonds on defendants under the jurisdiction of the city on standard forms provided by the Department of Corrections, and it shall further be the duty of the chief of corrections to shall~~ deliver to the proper court the coupon stubs of these bonds. The Chief of Corrections shall deposit with the revenue collection administrator all sums taken on ~~cash~~ bonds, which sums shall be kept in an account and fund to be designated by the Chief Financial Officer.

(h) Where applicable, the bond clerk shall refund all ~~cash~~ bonds upon appearance of the principal at the time set for trial and the completion of the trial of the principal or upon the dismissal of the offense for which the bond was set. Any bond so refunded shall be refunded by direct payment to the principal or by mailing it to the principal within ten days of the completion of trial or the dismissal of the charge; provided, however, that when a ~~cash~~ bond is consummated by check, the bond clerk shall have a maximum of 20 days within which to make the refund. The 20-day period shall begin with the date of the ~~cash~~ bond or the date of the check, whichever is later. The bond clerk at the election of the principal may remit part of the ~~cash~~ bond to the particular court involved in payment of the fine and remit the balance of the cash bond to the principal. Nothing in this section shall in any way limit or prohibit the bond clerk from refunding any forfeited bond when the prisoner is produced prior to the issuance of an execution.

SECTION 2: That Chapter 62, Article II, Division 1, Section 62-29 (b) of the City of Atlanta Code of Ordinances be amended so that it shall read as follows (with permanent additions in underline font and permanent deletions in strikethrough font):

Sec. 62-29. - Public defender and assistant.

(b) The duties of the Public Defender of the Municipal Court shall be the representation of, and the provision of legal services to, indigent defendants who are tried in the Municipal Court and



the representation of, and provision of legal services to, indigent defendants who appear before the Municipal Court for commitment purposes, including all necessary pretrial preparation and interviews. In addition, the Public Defender is authorized to: provide assistance with jail discharge planning; assist with coordination of social services for defendants; and apply for grant funding on behalf of the City to support these efforts, pursuant to the City's Procurement Code.

SECTION 3: That Chapter 62, Article II, Division 1, Section 62-31 of the City of Atlanta Code of Ordinances, which is currently reserved, be amended so that it shall read as follows (with permanent additions in underline font):

Sec. 62-31. – Bail established under certain circumstances.

- (a) For offenses under the jurisdiction of the Atlanta Municipal Court, except as set forth in subsections 62-31 (b), (c), (d) and (f) below, the Chief of Corrections or the Chief's designated representative shall release the accused from the Atlanta City Detention Center on their own recognizance or signature, without the requirement of posting any financial obligation prior to release. The Chief of Corrections or his designee shall release all such persons from custody immediately after booking. All such persons shall be provided with a written directive regarding the time and date that they must appear before the Municipal Court.
- (b) For any offense containing an element of violence or threatened violence against a person, the defendant is to be detained until the initial appearance hearing, which shall be held as soon as practicable, but in no event later than 48 hours after the time of the arrest, or 72 hours after the time of arrest where the arrest occurs pursuant to a warrant. For purposes of this subsection 62-31(b), the following shall be deemed an "offense containing an element of violence or threatened violence:"
- 1) City Ordinance 106-81.1: Disorderly Conduct- Act of violence toward another
 - 2) City Ordinance 106-81.3: Disorderly Conduct - Fighting
 - 3) City Ordinance 106-81.7: Disorderly Conduct- Physical obstruction of another
 - 4) O.C.G.A. § 40-6-391: Driving Under the Influence
 - 5) An offense which is bailable only before a judge of Georgia superior court
 - 6) Other offenses which the Corrections Chief reasonably believes involve violence or the threat of violence to a person
 - 7) Any citation that includes "DV" (domestic violence) written by the arresting officer at any location on the ticket regardless of the offense charged
 - 8) Idling and loitering for illicit sex
 - 9) A defendant who is currently serving probation or parole, regardless of the current offense
- (c) If a person who has been released on a recognizance or signature bond under this ordinance is later arrested and thereafter booked into the Atlanta City Detention Center for an offense under the jurisdiction of the Municipal Court prior to the disposition of the earlier charge, the chief of corrections or the chief's designee shall bring that person to the initial appearance hearing to be held as soon as practicable, but in no event later than 48 hours after arrest, or 72 hours after the time of arrest where the arrest occurs pursuant to a warrant.
- (d) If a person who has been released on a recognizance or signature bond under this ordinance is later arrested and detained on a warrant for failure to appear in the Municipal



Court during the pendency of the earlier charge, the chief of corrections or his designee shall bring that person to the initial appearance hearing to be held as soon as practicable, but in no later than 48 hours after arrest, or 72 hours after the time of arrest where the arrest occurs pursuant to a warrant.

- (e) In cases where the Municipal Court conducts an initial appearance hearing pursuant to subsections (b), (c), or (d) above, and requires a cash bond or other secured financial obligation as a condition of pre-trial release, the Court's written determination shall include a finding regarding the defendant's present ability to pay the financial condition set. The Municipal Court shall not establish a financial condition for pre-trial release that results in a defendant being detained solely because he or she does not have enough money to meet the financial requirement. Nothing in this Chapter shall limit the authority of a municipal court judge to impose any nonfinancial condition of release in accordance with existing law.
- (f) Nothing in this chapter shall prohibit the acceptance of bond set by an extra jurisdictional court.
- (g) The Chief Judge of the Municipal Court is authorized to promulgate rules necessary for the administration of this Section.
- (h) Nothing in this chapter shall limit the authority granted to the judges of the Atlanta Municipal Court by Georgia law.

SECTION 4: That Chapter 62, Article II, Division 1, Section 62-43, subsections (a), (c), (d) and (e) of the City of Atlanta Code of Ordinances be amended so that they shall read as follows (with permanent additions in underline font and permanent deletions in strikethrough font):

Sec. 62-43. - Collection of fines, cash collateral; reports on disposition of cases.

- (a) Where applicable pursuant to Sections 62-1(c) and 62-31 of this Chapter, the Chief of Corrections or the Chief's designated representative ~~The police chief or the police chief's designated representative~~ shall collect all ~~cash~~ bond collateral for defendants on all cases on rates that may be prescribed by ~~the chief~~ a judge of the Municipal Court, with a proper report to be given to the proper court.
- (c) The Chief of corrections ~~police chief or the Chief's~~ designated representative shall report daily all collections to the chief financial officer and daily to deposit all cash and other payments with the revenue collection administrator's office.
- (d) Each judge and associate judge of the Municipal Court shall note on each charge or written accusation the disposition, except those on which ~~cash~~ collateral has been collected or those which have been collected by the violations bureau.
- (e) ~~Whenever an error is made in making an entry in any of the books provided for in this section or any other books kept in the department of corrections police, the erroneous entry shall not be erased, but an ink line shall be drawn through it and the correct entry inserted immediately above or below the erroneous entry. This entry shall be signed by the initials of the officer making it.~~



SECTION 5: That Chapter 62, Article II, Division 3, Section 62-81 of the City of Atlanta Code of Ordinances be amended so that it shall read as follows (with permanent additions in underline font and permanent deletions in strikethrough font):

Sec. 62-81. - Authority to take and accept bond.

The Chief of Corrections or the Chief's designated representative ~~and the chief judge and the associate judges of the municipal court~~ is authorized to receive appearance bonds of defendants and witnesses, in the form of ~~cash~~ recognizance, signature, property, or cash or written bonds of professional bondspersons, or otherwise, pursuant to the provisions of Sections 62-1(c) and 62-31 of this Chapter ~~as they shall deem necessary, to~~ secure the attendance of defendants and witnesses in Municipal Court. If a particular defendant is charged with two or more offenses and bond is deemed necessary, a separate bond ~~shall~~ may be set for each offense. The bond shall remain in full force and effect until the disposition of the case and until the defendant is surrendered, or until otherwise directed by the Municipal Court or other court of law. ~~It shall be left to the sound discretion of the chief of corrections or designated representatives to take and accept bonds, to determine the solvency of any tendered surety and to do all in their power to protect the city against loss if a forfeiture occurs.~~ The Mayor may require professional bondspersons to deposit with the chief financial officer a sufficient fund to protect the interests of the City. The Chief of Corrections or the Chief's designated representatives and the Chief Judge and Associate Judges of the Municipal Court shall promptly forward all bonds to the Clerk of the Court.

SECTION 6: That Chapter 62, Article II, Division 3, Section 62-85 of the City of Atlanta Code of Ordinances be amended so that it shall read as follows (with permanent additions in underline font and permanent deletions in strikethrough font):

Sec. 62-85. - Forfeiture of ~~cash~~ bond for failure to appear.

(a) Any person charged in the Municipal Court with the violation of a section of this Code or an ordinance or an offense against the City who has posted a ~~cash~~ bond, including a recognizance or signature bond, for a personal appearance at a designated time and place and who fails to appear at this time shall forfeit the bond upon the call of the case for trial, and the court shall so declare in open court.

(b) Forfeiture of a ~~cash~~ bond, including a recognizance or signature bond, shall not be a bar to a subsequent prosecution of the accused for the violation.

SECTION 7: That Chapter 62, Article II, Division 3, Section 62-86(d) of the City of Atlanta Code of Ordinances be amended so that it shall read as follows (with permanent additions in underline font and permanent deletions in strikethrough font):

Sec. 62-86. - Bond forfeiture order to show cause.

(d) Where applicable, on application filed within 60 days from payment of judgment, the court shall order remission under the following conditions:

- (1) Provided the bond amount has been paid within 60 days after judgment and the delay has not prevented the proper prosecution of the principal, the court, on motion at a hearing upon proper notice having been given to the prosecuting attorney, shall direct a remission of 95 percent of the bond if the surety apprehended and surrendered the



defendant or if the apprehension or surrender of the defendant was substantially procured by the surety or caused by the surety. Should the surety produce the principal within two years of the failure to appear, the surety shall be entitled to a refund of 50 percent of the bond payment; and

(2) The prosecuting attorney must be given at least 20 days' notice before a hearing is held on the application for remission and must be furnished with copy of the application along with the affidavits and other documentation and evidence supporting such application. Remission shall be granted on the condition of the payment of costs by the surety.

SECTION 8: That Chapter 62, Article II, Division 3, Section 62-87(a) of the City of the City of Atlanta Code of Ordinances be amended so that it shall read as follows (with permanent additions in underline font and permanent deletions in strikethrough font):

Sec. 62-87. - Judgment on bond, issuance and collection of executions; effect of noncompliance.

(a) *Authority.* If no sufficient cause is shown, the Municipal Judge or other officer presiding shall proceed to enter judgment against the principal and surety, under sections 62-85 and 62-86, for the amount of bond, including a recognizance or signature bond as applicable, and execution shall be issued for the amount of this judgment and placed in the hands of the municipal revenue collector, who shall proceed to collect it by levy and sale as in the case of tax executions. However, judgment shall not be entered against either principal or surety until service shall have been perfected.

SECTION 9: That the Chief of Corrections shall be tasked with monitoring the results of implementing this ordinance, and shall provide a presentation regarding these results to the Public Safety Committee of the Atlanta City Council six months after implementation. The presentation shall be open for public attendance.

SECTION 10: That this Ordinance shall take effect thirty days after its approval by the Mayor.

SECTION 11: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

A true copy,

Rhonda Dauphin Johnson
Municipal Clerk

ADOPTED as amended by the Atlanta City Council
APPROVED by Mayor Keisha Lance Bottoms

FEB 05, 2018
FEB 06, 2018

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