



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**October 22, 2020**

**Department** Administration

**Director Approval** Kelly Passauer

**AGENDA ITEM** Consider recommendation of the Planning Commission to adopt an ordinance amending Zoning Code Sections 1701.0 through 1705.0 to remove Building Inspection Responsibilities.

**SUMMARY RECOMMENDATION** City Staff recommends adopting an ordinance.

**BACKGROUND** On August 27, 2020 the City Commission initiated a public hearing before the Planning Commission to consider a text amendment removing building inspection responsibilities from the zoning code. This was in response to work performed by the Building and Flood Administrator has been working with ISO Specialist Melissa Mitchell to implement the CRS program for the City of Independence. As part of that process, some of our ordinances needed to be updated. On June 30, 2020 the City Commission adopted Ordinance 4330 regarding the duties and qualifications of the building inspector. The attached proposed ordinance would remove Building Inspection Responsibilities from the Zoning Code.. On October 6, 2020 the Planning Commission held a public hearing regarding the text amendment and unanimously recommended approval.

**BUDGET IMPACT** There would be no budget impact.

**SUGGESTED MOTION** I move to adopt an ordinance amending Zoning Code amending Zoning Code Sections 1701.0 through 1705.0 to remove Building Inspection Responsibilities.

**SUPPORTING DOCUMENTS**

1. Staff Report to the Planning Commission
2. Proposed Ordinance

## Planning Commission

- b. Public hearing to consider text amendments to Appendix B-Zoning of the City code relating to Sections 1701 – 1705.

On August 27, 2020 the City Commission initiated a public hearing before the Planning Commission to consider a text amendment removing building inspection responsibilities from the zoning code. Several years ago, when the original ordinances were adopted, the Building Inspector and Zoning Administrator duties were filled by the same employee. Past restructuring has separated these duties; however, the code was not updated to reflect this change. In addition, the Building and Flood Administrator has been working with ISO Specialist Melissa Mitchell to implement the CRS program for the City of Independence. As part of that process, it was noted that some of our ordinances needed to be updated. On June 30, 2020 the City Commission adopted Ordinance 4330 regarding the duties and qualifications of the building inspector. The attached proposed ordinance would remove Building Inspection Responsibilities from the Zoning Code; however, these responsibilities would remain in the Building Code.

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

If the Planning Commission wishes to approve this text amendment, then it is recommended that the following determinations be included in the motion:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the corporate City limits; and
- c. The proposed amendment is made necessary because of past restructuring of job duties, and all zoning districts will be affected.

Included for your reference are the following documents:

1. Request for Commission Action (RCA) to the City Commission for their September 10, 2020 meeting
2. Ordinance 4330 adopted by the City Commission on June 30, 2020
3. Proposed Ordinance
4. Public Hearing Notice



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**August 27, 2020**

**Department** Administration

**Director Approval** Kelly Passauer

**AGENDA ITEM** Consider initiating a public hearing before the Planning Commission to consider a text amendment removing building inspection responsibilities from the zoning code.

**SUMMARY RECOMMENDATION** City Staff recommends initiating a public hearing before the Planning Commission.

**BACKGROUND** The Building and Flood Administrator has been working with ISO Specialist Melissa Mitchell to implement the CRS program for the City of Independence. As part of that process, some of our ordinances needed to be updated. On June 30, 2020 the City Commission adopted Ordinance 4330 regarding the duties and qualifications of the building inspector. The attached proposed ordinance would remove Building Inspection Responsibilities from the Zoning Code.

Any text amendments to the Zoning Code require the Planning Commission to conduct a public hearing, after which they will forward their recommendation to the City Commission for final consideration.

**BUDGET IMPACT** There would be no budget impact.

**SUGGESTED MOTION** I move the City initiate a public hearing before the Planning Commission to consider a text amendment removing building inspection responsibilities from the zoning code.

**SUPPORTING DOCUMENTS**

1. Ordinance 4330 adopted by the City Commission on June 30, 2020.
2. Proposed Ordinance for consideration at a Planning Commission public hearing.

## **ORDINANCE NO. 4330**

### **An Ordinance Repealing City Code Sections 18-35 and 18-37 and Replacing Them with New Provisions Regarding The Appointment, Duties and Qualifications of a Building Inspector**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** Current City Code Sections 18-35 and 18-37 are hereby repealed and replaced by the provisions of this ordinance

**Section 2. Office of the building inspector.**

a. There is hereby established the office of building inspector.

b. The city manager shall appoint a person who in his opinion is qualified through education and experience to hold the title of building inspector. The building inspector may hold another office or position concurrently.

c. The budget for the office of building inspector and the salary for the building inspector shall be established by the governing body in the same manner as for all other departments and staff salaries.

**Section 3. Duties of the building inspector.** The building inspector, or designee, shall enforce these regulations and in addition thereto and in furtherance of said authority, he shall:

a. Approve and issue all permits and certificates regarding compliance with all applicable building codes and ordinances, and make and maintain records thereof.

b. Conduct inspections of buildings and structures to determine compliance with the provisions of the applicable building codes and ordinances.

**Section 4. Building Permits.**

a. Unless a building permit shall first have been obtained from the office of the building inspector:

1. The construction, building, moving, remodeling or reconstruction of any structure shall not be commenced;

2. For any property located in the flood plain, any improvement to any structure located thereon shall not be commenced, provided however, the building permit fee shall be waived for any work that would not ordinarily require a building permit, as determined in the discretion of the building inspector.

3. The improvement of any plan preliminary to any use of such land shall not be commenced; and

4. Any building permit issued in conflict with the provisions of this ordinance shall be null and void.

b. For any property located in the flood plain, any application for a building permit for all new or substantially improved structures in the Special Flood Hazard Area shall submit an elevation certificate with the application for building permit.

c. A building permit shall either be issued or denied by the building inspector within ten (10) days after the receipt of a complete application, or within such further time period as may be agreed to by the applicant. If the building inspector denies the application for a building permit, the reasons for the denial shall be provided to the applicant in writing.

d. A building permit shall become null and void six (6) months after the date it was issued, unless within such six (6) month period construction, building, moving, remodeling or reconstruction of a structure is commenced.

## **Section 5.     Occupancy Certificates.**

a. No structure or any addition thereto constructed, built, moved, remodeled or reconstructed after the effective date of this ordinance shall be occupied or used for any purpose unless an occupancy certificate shall first have been obtained from the office of the building inspector consistent with the provisions of this ordinance.

b. No occupancy certificate for a structure or addition thereto constructed, built, moved, remodeled or reconstructed after the effective date of this ordinance shall be issued until such time as all work has been completed and the premises inspected and certified by the office of the building inspector to be in full and complete compliance with the plans and specifications upon which the building permit was issued. Pending issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six (6) months from its



date pending the completion of any addition or during partial occupancy of the premises. An occupancy certificate shall be issued or denied within ten (10) days after the receipt of an application therefore. If the occupancy certificate is denied, the building inspector shall provide the applicant the reasons for the denial in writing.

**Section 6. Appeals.** Any person or persons jointly or severally agreed by any decision of the building inspector may appeal such decision to the board of zoning appeals in accordance with the procedures set forth in City Code Sections 2-114 and 2-116.

**Section 7. Fees, Charges and Expenses.** The governing body shall establish a schedule of fees, charges, and expenses, and a collection procedure, for building permits, certificates of occupancy, appeals, and other matters pertaining to this ordinance. The schedule of fees shall be posted in the office of the building inspector and may be altered and amended only by the governing body. No permit or certificate shall be issued unless or until such costs, charges, fees, or expenses listed in this ordinance have been paid in full, nor shall any action be taken on proceedings before the governing body, unless or until such fees have been paid in full.

**Section 8. Violations.** If any building or structure is erected, constructed, reconstructed, altered, converted or maintained, the city, in addition to other remedies, may institute an appropriate action to prevent such unlawful erection, construction, reconstruction, alteration, conversion; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, or business in or about such premises. Such ordinance shall be enforced by the building inspector, or designee, who is empowered to cause any building, structure, place or premises to be inspected and examined, and to order, in writing, the remedy of any condition found to exist therein or in violation of any provision of this ordinance.

**Section 9. Penalty.** Pursuant to K.S.A. 12-710 as amended, the owner or agent of a building or premises in or upon which a violation of any provisions of this ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor, or any other person who commits, takes part, or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 for any one offense. Each day of noncompliance with the terms of this ordinance shall constitute a separate offense.

Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. However, nothing shall deprive the citizen of his rights under the U.S. Constitution.

**Section 10.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 30<sup>th</sup> day of  
June, 2020.*

  
LEONHARD CAFLISCH, Mayor

ATTEST:

  
DAVID W. SCHWENKER, City Clerk



City of Independence, Kansas

**NOTICE TO THE PUBLIC**

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, October 6, 2020 at 5:30 p.m.

To receive comments to consider text amendments to Appendix B-Zoning of the City code relating to Sections 1701 - 1705.

**Case Number:**

2020/ZA/03

The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. However, due the social distancing participation is encouraged via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373#

All interested persons should participate in the meeting and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer  
Zoning Administrator  
811 W Laurel Street  
Independence, KS 67301  
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator

**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance Amending Zoning Code Sections 1701.0  
Through 1705.0 to Remove Building Inspection Responsibilities**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** Zoning Code Section 1701.0 is amended to read as follows in its entirety:

**1701.0. – Office of the zoning administrator.**

a. There is hereby established the office of zoning administration.

b. The city manager shall appoint a person who in his opinion is qualified through education and experience to hold the title of zoning administrator. The zoning administrator may hold another office or position concurrently.

c. The budget for the office of zoning administration and the salary for the zoning administrator shall be established by the governing body in the same manner as for all other departments and staff salaries.

**1701.1. – Duties of the zoning administrator.** The zoning administrator, or designee, shall enforce these regulations and in addition thereto and in furtherance of said authority, he shall:

a. Approve and issue all zoning permits and certificates and make and maintain records thereof.

b. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of the zoning regulations.

c. Receive, file, and forward to the board of zoning appeals the records in all appeals and all other applications.

d. Maintain permanent and current records of the zoning regulations, including but not limited to, all zoning maps, amendments, conditional uses, variances, appeals and applications therefor and records of hearings thereon.

e. Prepare and have available in book, pamphlet, or map form, on or before September 30 of each year:

1. The compiled text of the zoning regulations and amendments thereto, including all amendments adopted through the preceding June 30th, and

2. A zoning map or maps, showing the zoning districts, divisions and classifications in effect on the preceding June 30th.

f. Maintain for distribution to the public a supply of copies of the zoning map or maps, the compiled text of the zoning regulations, and the rules of the board of zoning appeals.

g. Provide such clerical, technical and consultative assistance as may be required by the planning commission, board of zoning appeals and other boards, commissions and officials in the exercise of their duties relating to these regulations. a. There is hereby established the office of zoning

**Section 2.** Zoning Code Section 1702.0 is amended to read as follows in its entirety:

**1702.0. – Appeals.** Any person or persons jointly or severally agreed by any decision of the zoning administrator may appeal such decision to the board of zoning appeals in accordance with the procedures set forth in City Code Sections 2-114 and 2-116.

**Section 3.** Zoning Code Section 1703.0 is amended to read as follows in its entirety:

**1703.0. – Occupancy certificates.**

No structure or addition thereto constructed, built, moved, remodeled or reconstructed after the effective date of these regulations shall be occupied or used for any purpose, and no land vacant on the effective date of these regulations shall be used for any purpose except for agricultural use and no use of any land or structure shall be changed to any other use, unless an occupancy certificate shall first have been obtained from the office of the zoning administrator certifying that the proposed use of occupancy complies with all provisions of these zoning regulations.

**1703.1. – Application for occupancy certificates.**

Every application for an occupancy certificate for a new or changed use of land or structures shall be filed with the office of the zoning administrator and be in such form and contain such information as the zoning administrator shall provide by general rule.

### **1703.2. – Issuance of occupancy certificate.**

No occupancy certificate for a new use of any structure or land shall be issued until the premises have been inspected and certified by the office of the zoning administrator to be in full and complete compliance with all the applicable regulations for the zoning district in which it is located. Pending the issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six months from its date pending the completion of any addition or during partial occupancy of the premises. An occupancy certificate shall be issued, or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued, within ten days after the receipt of an application therefor, or after the office of the zoning administrator is notified in writing that the structures or premises are ready for occupancy.

**Section 4.** Zoning Code Section 1704.0 is amended to read as follows in its entirety:

### **1704.0. – Fees, charges, and expenses.**

The governing body shall establish a schedule of fees, charges, and expenses, and a collection procedure for certificates of occupancy, appeals, and other matters pertaining to the ordinance. The schedule of fees shall be posted in the office of the zoning administrator and may be altered or amended only by the governing body. No permit, certificate, conditional use approval, or variance shall be issued unless or until such costs, charges, fees or expenses listed in this ordinance have been paid in full, nor shall any action be taken on proceedings before the governing body, unless or until fees have been paid in full.

**Section 5.** Zoning Code Section 1705.0 is amended to read as follows in its entirety:

### **1705.0. – Violation and penalty.**

#### **1705.1. – Violations.**

If any building or structure is used in violation of this ordinance, the city, in addition to other remedies, may institute any appropriate action to prevent such unlawful maintenance or use; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises. Such ordinance shall be enforced by the zoning administrator, or designee.

**1705.2. – Penalty.**

Pursuant to K.S.A. 12-710 as amended, the owner or agent of a building or premises in or upon which a violation of any provisions of this ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor, or any other person who commits, takes part, or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 for any one offense. Each day of noncompliance with the terms of this ordinance shall constitute a separate offense.

Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. However, nothing shall deprive the citizen of his rights under the U.S. Constitution.

**Section 6.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 22<sup>nd</sup> day of October, 2020.*

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LEONHARD CAFLISCH, Mayor

ATTEST:

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DAVID W. SCHWENKER, City Clerk