



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
November 12, 2020

Department Administration

Director Approval _____

AGENDA ITEM Consider adopting an ordinance relating to appealing decisions of the Building Inspector.

SUMMARY RECOMMENDATION City staff recommends approval.

BACKGROUND On June 30, 2020 the City Commission adopted ordinance 4330 repealing City Code Sections 18-35 and 1837 and replacing them with new provisions regarding the appointment, duties and qualifications of the Building Inspector. In Section 6 of this ordinance it referred to appeals going to the Board of Zoning Appeals. While decision of the Zoning Administrator go to the Board of Zoning Appeals, decisions of the Building Inspector should not.

City staff and the City Attorney reviewed this issue, and there are two alternatives for appeals to go to:

- City Commission, or
- District Court

An issue that could occur if appealed decisions of the Building Inspector go to the City Commission is that not all of the Commissioners will be familiar with the building code laws and regulations.

BUDGET IMPACT There is no anticipated budget impact.

SUGGESTED MOTION I move to authorize the Mayor to sign an ordinance amending Ordinance No. 4330 having to do with appeals from decisions of the building inspector with such appeals to go to the _____ (City Commission or District Court).

SUPPORTING DOCUMENTS

1. Ordinance 4330
2. Alternative Ordinances

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 Current City Code Sections 18-35 and 18-37 are hereby repealed and replaced by the provisions of this ordinance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



State of Kansas, Montgomery County

This instrument was filed for
Record on September 16, 2020 11:41 AM
Recorded in Book 694 Page 851 - 854
Fee: \$0.00 202003243

Marilyn Calhoun
Marilyn Calhoun, Register of Deeds

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.

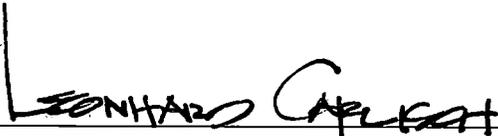
Section 8. Violations. If any building or structure is erected, constructed, reconstructed, altered, converted or maintained, the city, in addition to other remedies, may institute an appropriate action to prevent such unlawful erection, construction, reconstruction, alteration, conversion; to restrain, 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 30th day of
June, 2020.*


LEONHARD CAFLISCH, Mayor

ATTEST:


DAVID W. SCHWENKER, City Clerk

ORDINANCE NO. _____

**An Ordinance Amending Ordinance No. 4330
Having to do with Appeals from Decisions of the Building Inspector**

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

Section 1. Section 6 dealing with appeals from decisions of the building inspector as it currently appears in Ordinance 4330 adopted June 30, 2020, is hereby amended to read as follows in its entirety:

Section 6. Appeals

Any person or persons jointly or severally aggrieved by any decision of the building inspector may appeal such decision to the City Commission whose decision shall be final. Any person or persons jointly or severally aggrieved by the decision of the City Commission may appeal such decision to the district court as provided by state statute.

Section 2. 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 12th day of November, 2020.

LEONHARD CAFLISCH, Mayor

ATTEST:

DAVID W. SCHWENKER, City Clerk

ORDINANCE NO. _____

**An Ordinance Amending Ordinance No. 4330
Having to do with Appeals from Decisions of the Building Inspector**

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

Section 1. Section 6 dealing with appeals from decisions of the building inspector as it currently appears in Ordinance 4330 adopted June 30, 2020, is hereby amended to read as follows in its entirety:

Section 6. Appeals

The decision of the building inspector shall constitute the final decision for purposes of appeal, and any person or persons jointly or severally aggrieved by any decision of the building inspector may appeal such decision to the district court as provided by state statute.

Section 2. 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 12th day of November, 2020.

LEONHARD CAFLISCH, Mayor

ATTEST:

DAVID W. SCHWENKER, City Clerk