



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
February 25, 2021

Department Code Enforcement

Director Approval David Cowan

AGENDA ITEM Consider adopting a Charter Ordinance exempting the City from certain statutory provisions relating to Municipal Court; and an ordinance providing for substitute provisions for procedures in Municipal Court.

SUMMARY RECOMMENDATION City Staff is recommending approval of the Charter Ordinance and Ordinance prepared by the City Attorney.

BACKGROUND City staff has been working to improve our Code Enforcement and Building Department efforts. A recent addition to the Code Enforcement Team was Animal Control. The Code Enforcement Team is currently cross-training and working together to cover Animal Control and Code Enforcement duties. As a part of our cross-training efforts, Code Enforcement needs the ability to issue citations and court appearances. The ordinances would then allow the City Manager to appoint designated City Officers, who are not law enforcement certified, to issue citations for related ordinance violations.

These efforts are combined with on-going city efforts to streamline our court process. They allow citizens online access to view violations and pay online versus coming to court.

SUGGESTED MOTION I move to approve Charter Ordinance No. ____ exempting the City from Certain Statutory Provisions Found in the Code for Municipal Courts.

I move to approve Ordinance No. ____ for substitute provisions for Independence Municipal Court.

SUPPORTING DOCUMENTS

1. Charter Ordinance
2. Ordinance

CHARTER ORDINANCE NO. _____

**A Charter Ordinance Exempting the City of Independence, Kansas,
from Certain Statutory Provisions Found in the Code for Municipal Courts
Courts and Authorizing Adoption of Substitute Provisions by Ordinary Ordinance**

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

Section 1. The City of Independence, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself and make inapplicable to it the provisions of K.S.A. 12-4113(g), K.S.A. 12-4202, K.S.A. 12-4203, K.S.A. 12-4204, K.S.A. 12-4205a and K.S.A. 12-4207. These statutory provisions are part of the Kansas Code for Municipal Courts, an enactment of the legislature which is applicable to the City of Independence but not uniformly applicable to all cities.

Section 2. The governing body may enact, by ordinary ordinance, substitute and additional provisions on the subject matter contained in the statutes being exempted.

Section 3. This ordinance shall be published once each week for two (2) consecutive weeks in the in the official City newspaper.

Section 4. This is a charter ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, of the Constitution of the State of Kansas, after which the charter ordinance shall become effective if approved by a majority of the electors voting thereon.

Adopted by the Governing Body of the City of Independence, Kansas, by not less than two-thirds of the members elect voting in favor thereof on the ____ day of _____, 2021.

LOUIS YSUSI, Mayor

ATTEST:

DAVID W. SCHWENKER, City Clerk

ORDINANCE NO. _____

**An Ordinance Providing for Substitute Provisions for
Procedures in the Independence Municipal Court Replacing Certain
Statutory Provisions Which Have Been Exempted by Charter Ordinance**

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

Section 1. Definitions.

a. “City Officer” shall mean a person who is an employee of the city who has been designated a city officer by the city manager in addition to such other duties as such person may have.

b. “Complaint” shall mean a sworn statement, or written statement by a law enforcement officer or city officer, of essentially facts constituting a violation of an ordinance.

Section 2. Complaint. A municipal court complaint shall be in writing and shall be signed by the complainant. The complaining party may be a law enforcement officer, a city officer, or any other person. More than one violation may be charged in the same complaint. A complaint shall be deemed sufficient if it is substantially the form of the complaint set forth below:

IN THE MUNICIPAL COURT OF INDEPENDENCE, KANSAS

The City of Independence, Kansas,

Plaintiff,

vs.

[Insert Name of Accused Person],

Defendant.

COMPLAINT

The undersigned, complains that on or about _____ day of _____, 20____, in the City of Independence, County of Montgomery, State of Kansas, _____
[Accused Person], did then and there unlawfully: _____

_____ in violation of Section _____ of Ordinance No. _____ of the City of Independence, Kansas.

COMPLAINANT

Sworn to positively before me on this _____ day of _____, 20____.

Officer Authorized to Administer Oaths

(This Complaint is not required to be sworn if it is signed by a law enforcement officer or a city officer.)

Section 3. Notice to Appear or Warrant; Service.

a. A copy of the complaint shall be served upon the accused person together with a notice to appear or a warrant by a law enforcement officer or city officer. The original complaint shall be filed with the municipal court clerk and may be filed either before or after it has been served upon the accused person. Alternatively, the complaint may be filed initially with the municipal court, and if filed in this manner, a copy of the complaint shall be forwarded to the city attorney for review.

b. The city attorney may cause the notice to appear to be served upon the accused person or, depending on circumstances, may request that a warrant issue if permitted by law. If the city attorney fails to either cause a notice to appear to issue, or to request a warrant be issued on a complaint initially filed with the municipal court, the municipal judge may, upon affidavits filed with him/her or alleging the violation of an ordinance, order the city attorney to institute proceedings against any person. Any such municipal judge shall be disqualified from sitting on any such case wherein such an order was entered and is further prohibited from communicating about such case with the municipal judge pro tem appointed by the municipal judge to preside therein.

Section 4. Notice to Appear, Contents. A notice to appear shall describe the offense charged, shall summons the accused person to appear before the municipal court and shall contain a space in which the accused person may agree, in writing, to appear at a time not less than five (5) days after such notice to appear is given, unless the accused person demands an earlier hearing date. A notice to appear may be signed by either a municipal judge, the clerk of the municipal court, the city attorney, any law enforcement officer, or any city officer.

A notice to appear shall be deemed sufficient if in substantially the form of the notice to appear set forth below:

IN THE MUNICIPAL COURT OF INDEPENDENCE, KANSAS

The City of Independence, Kansas,

Plaintiff,

vs.

[Insert Name of Accused Person],
[Address of Accused Person]

Defendant.

NOTICE TO APPEAR

The City of Independence, Kansas to the above named accused person:

YOU ARE HEREBY SUMMONED to appear before the municipal court of Independence, Kansas, on the _____ day of _____, 20____, at ____:____ o'clock a.m./p.m. to answer a Complaint charging you with _____

If you fail to appear, a warrant will be issued for your arrest.

DATE

Signature of Issuing Official
Title of Official

I hereby agree to appear in person in the Independence Municipal Court at the above stated time and place.

DATE

Signature of Accused

RETURN OF SERVICE

The undersigned hereby certifies that on the _____ day of _____, 20____, the notice to appear was served, mailed, or delivered according to law.

DATE

Authorized Official

Section 5. Manner of Service; By Whom. The notice to appear shall be served upon the accused person by delivering a copy to the accused person, or by leaving it at the dwelling house or usual place of abode of the accused person, or with some person of suitable age and discretion residing therein, or by mailing it to the last known address of the accused person. A notice to appear may be served by any law enforcement officer within the State or a city officer, or if mailed, shall be mailed by a law enforcement officer, a city officer, or by the municipal court clerk. Upon service by mail, the law enforcement officer, city officer, or municipal court clerk shall execute a verification to be filed with the notice to appear. The verification shall be deemed sufficient if in substantially the following form:

RETURN OF SERVICE

The undersigned hereby certifies that on the _____ day of _____, 20____, a true and correct copy of the notice to appear was mailed by First Class Mail, postage prepaid, to the following person at the following address:

(Name)
(Address)

DATE

Law Enforcement Officer, City Officer, or
Municipal Court Clerk

Section 6. Complaint and Notice to Appear Combined. The complaint and notice to appear may be combined into one charging document signed by a law enforcement officer or city officer and shall be deemed sufficient if it is substantially in the form of the complaint/notice to appear set forth below:

IN THE MUNICIPAL COURT OF INDEPENDENCE, KANSAS

The City of Independence, Kansas,

Plaintiff,

vs.

[Insert Name of Accused Person],

Defendant.

COMPLAINT / NOTICE TO APPEAR

The undersigned, complains that on or about _____ day of _____, 20____, in the City of Independence, County of Montgomery, State of Kansas, _____
[Accused Person], did then and there unlawfully: _____

in violation of Section _____ of Ordinance No. _____ of the City of Independence, Kansas.

COMPLAINANT
(Law Enforcement Officer or City Officer)

Sworn to positively before me on this _____ day of _____, 20____.

Officer Authorized to Administer Oaths

(This Complaint is not required to be sworn if it is signed by a law enforcement officer or a city officer.)

YOU ARE HEREBY SUMMONED to appear before the municipal court of Independence, Kansas, on the _____ day of _____, 20____, at ____:____ o'clock a.m./p.m. to answer the above Complaint.

If you fail to appear, a warrant will be issued for your arrest.

DATE

Signature of Issuing Official (Law Enforcement Officer or City Officer)

I hereby agree to appear in person in the Independence Municipal Court at the above stated time and place.

DATE

Signature of Accused

RETURN OF SERVICE

The undersigned hereby certifies that on the _____ day of _____, 20____, the notice to appear was served, mailed, or delivered according to law.

DATE

Authorized Official (Law Enforcement Officer or City Officer)

Section 7. 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 ____ day of _____, 2021.

LOUIS YSUSI, Mayor

ATTEST:

DAVID W. SCHWENKER, City Clerk