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OIC039

CHARTER ORDINANCE NO. 39

**A CHARTER ORDINANCE EXEMPTING THE CITY OF HUTCHINSON, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-4113(G), K.S.A. 12-4202, K.S.A. 12-4203, K.S.A. 12-4204 AND K.S.A. 12-4207, PERTAINING TO COMPLAINTS IN THE MUNICIPAL COURT AND PROVIDING SUBSTITUTE REGULATIONS WITH RESPECT THERETO.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HUTCHINSON, KANSAS:

**Section 1.** That pursuant to the provisions of Section 5(c) of Article 12 of the Constitution of the State of Kansas, the City of Hutchinson, Kansas, hereby elects that K.S.A. 12-4113(g), K.S.A. 12-4202, K.S.A. 12-4203, K.S.A. 12-4204 and K.S.A. 12-4207 shall not apply to said City and provides a substitute provision on the same subject as follows:

**K.S.A. 12-4113(g) Definitions:**

"Complaint" means a sworn written statement, or a written statement by a law enforcement officer or other City of Hutchinson employee authorized by the City Manager to make such written statement, of the essential facts constituting a violation of an ordinance.

**K.S.A. 12-4202 Complaint; requirements; form:**

A complaint shall be in writing and shall be signed by the complainant. More than one violation may be charged in the same complaint. A complaint shall be deemed sufficient if in substantially the form of the complaint set forth in K.S.A. 12-4205 and amendments thereto or in substantially the following form:

**IN THE MUNICIPAL COURT OF HUTCHINSON, KANSAS**

|                                |   |               |
|--------------------------------|---|---------------|
| THE CITY OF HUTCHINSON, KANSAS | ) |               |
|                                | ) |               |
|                                | ) | Plaintiff,    |
|                                | ) |               |
|                                | ) | vs.           |
|                                | ) | Case No.      |
|                                | ) |               |
| _____                          | ) |               |
|                                | ) |               |
|                                | ) | Defendant(s). |
| _____                          | ) |               |

**COMPLAINT**

The undersigned, complains that on or about the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_,  
 in the City of Hutchinson, County of Reno and State of Kansas, \_\_\_\_\_  
 \_\_\_\_\_ did then and there unlawfully \_\_\_\_\_  
 \_\_\_\_\_ in violation of  
 Ordinance No. \_\_\_\_\_ of the City of Hutchinson.

\_\_\_\_\_  
Complainant

\*Sworn to positively before me, this \_\_\_ day of \_\_\_\_\_, A.D., 19\_\_.

\_\_\_\_\_  
Officer authorized to administer oaths

(\*This complaint is not required to be sworn if it is signed by a law enforcement officer or other City employee authorized by the City Manager to sign complaints.)

**K.S.A. 12-4203 Same; how used; issuance of warrant; refusal to issue; effect:**

A copy of the complaint shall be served, together with a notice to appear or a warrant, by a law enforcement officer or other City employee authorized by the City Manager upon the accused person, and forthwith, the complaint shall be filed with the municipal court, except that a complaint may be filed initially with the municipal court, and if so filed, a copy of the complaint shall forthwith be delivered to the city attorney. The city attorney shall cause a notice to appear to be issued, unless he or she has good reason to believe that the accused person will not appear in response to a notice to appear, in which case the city attorney may request that a warrant be issued. Such warrant will be issued if the complaint is positively sworn to and the municipal judge has probable cause to believe that (a) there has been the commission of a violation of a municipal ordinance, (b) the accused person committed such violation and (c) the accused person will not appear in response to a notice to appear.

If the city attorney fails either to cause a notice to appear or to request a warrant to be issued, on a complaint initially filed with the municipal court, the municipal judge may, upon affidavits filed with him or her 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 in any case wherein such 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.

**K.S.A. 12-4204 Notice to appear; contents; form:**

A notice to appear shall describe the offense charged, shall summon the accused person to appear, 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 shall demand an earlier hearing. A notice to appear may be signed by the city attorney, any law enforcement officer or other City employee authorized by the City Manager.

A notice to appear shall be deemed sufficient if in substantially the form of the notice to appear set out in K.S.A. 12-4205 or if in substantially the following form, to wit:

**CITY OF HUTCHINSON**  
**MUNICIPAL COURT**  
**210 West 1st**  
**Hutchinson, KS 67501**

**NOTICE TO APPEAR IN MUNICIPAL COURT**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Case No.: \_\_\_\_\_

City: \_\_\_\_\_ PD No.: \_\_\_\_\_

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YOU ARE HEREBY NOTIFIED THAT THE ABOVE CAPTIONED MATTER IN WHICH YOU ARE A DEFENDANT FOR COURT ACTION, IS SET ON \_\_\_\_\_, AT 8:00 A.M. IN MUNICIPAL COURT, 210 WEST FIRST AVENUE. IF YOU SHOULD FAIL TO APPEAR, A WARRANT WILL BE ISSUED, BY THE COURT, FOR YOUR ARREST.

\_\_\_\_\_  
JUDGE, MUNICIPAL COURT

**K.S.A. 12-4207 Same; service; return:**

The notice to appear shall be served upon the accused person by delivering a copy to him or her personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of said person. A notice to appear may be served by any law enforcement officer within the state or other City employee authorized by the City Manager and, if mailed, shall be mailed by a law enforcement officer of the municipality of its issuance, other City employee authorized by the City Manager or the clerk of the municipal court. Upon service by mail, the law enforcement officer shall execute a verification to be filed with a copy of the notice to appear. Said verification shall be deemed sufficient if in substantially the following form:

The undersigned hereby certifies that on the \_\_ day of \_\_\_\_\_, 19\_\_, a copy of notice to appear was mailed to \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_,  
\_\_\_\_\_.

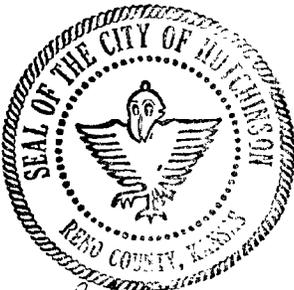
\_\_\_\_\_  
Signature of Law Enforcement Officer,  
Other City Employee, or Clerk of Municipal Court

**Section 2.** This Charter Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

**Section 3.** This Charter Ordinance shall take effect and be in force 61 days after is final publication, unless a sufficient petition if filed and a referendum held on the ordinance as provided in Article 12, Section 5, subsections (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

**PASSED BY THE GOVERNING BODY,** not less that two-thirds of the members elected voting in favor thereof, this 5 day of September, 1995, for the City of Hutchinson, Kansas.

ATTEST



Vernon Stallman  
Vernon Stallman, CMC, City Clerk

Dan Deming  
Dan Deming, Mayor