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1st Publication: _____
2nd Publication: _____

CHARTER ORDINANCE NO. 33

**A CHARTER ORDINANCE OF THE CITY OF DERBY, KANSAS,
EXEMPTING SUCH CITY FROM THE PROVISIONS OF K.S.A. 12-4113,
DEFINING CERTAIN TERMS PERTAINING TO PROSECUTIONS IN
THE MUNICIPAL COURT; AND PROVIDING SUBSTITUTE AND
ADDITIONAL PROVISIONS RELATING THERETO.**

WHEREAS, Article 12, Section 5 of the Constitution of the State of Kansas (the "Act") provides that cities may exercise certain home rule powers, including adopting charter ordinances which exempt such cities from enactments of the Kansas Legislature; and

WHEREAS, the City of Derby, Kansas (the "City") is a city, as defined in the Act, duly created and organized under the laws of the State of Kansas (the "State"); and

WHEREAS, K.S.A. 12-4113 is a part of an enactment of the Kansas Legislature (K.S.A. 12-4101 *et. seq.*) relating to proceeding in municipal courts, which enactment is applicable to the City, but is not uniformly applicable to all cities within the State; and

WHEREAS, the governing body of the City desires, by charter ordinance, to exempt the City from the provisions of K.S.A. 12-4113, and to provide substitute and additional provisions therefor in order to facilitate the institution of prosecutions in municipal court by issuance of citations by code enforcement officers who are not qualified as law enforcement officers;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. Exemption -- K.S.A. 12-4113. The City, by the power vested in it by the Act, hereby elects to exempt itself from and make inapplicable to it, the provisions of K.S.A. 12-4113, and does hereby provide the following substitute and additional provisions in place thereof as follows:

With respect to prosecution of infractions and offenses in the Derby municipal court, the following words and phrases shall have the meaning ascribed to them herein unless the context clearly requires another interpretation:

(a) "Appearance bond" means an undertaking, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions of the undertaking.

(b) "Accused person" means a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance.

(c) "Arraignment" means the formal act of calling the person accused of violating an ordinance before the municipal court to inform the person of the offense with which the person is charged, to ask the person whether the person is guilty or not guilty and, if guilty, to impose sentence.

(d) "Arrest" means the taking of a person into custody in order that the person will appear to answer for the violation of an ordinance. The giving of a notice to appear is not an arrest.

(e) "Bail" is the security given for the purpose of insuring compliance with the terms of an appearance bond.

(f) "City attorney" means any attorney who represents the city in the prosecution of an accused person for the violation of a city ordinance.

(g) "Code enforcement officer" means a person employed by the City to investigate violations of and enforce land use, building construction, construction trade licensing, and public health and safety ordinances and regulations of the City; code enforcement officers shall have power to sign, issue and execute notices to appear and uniform citations or uniform complaints and notices to appear with respect to violation of any such ordinances or regulations, but shall have no power to issue warrants or make arrests.

(h) "Complaint" means a sworn written statement, or a written statement by a law enforcement officer or code enforcement officer, of the essential facts constituting a violation of an ordinance.

(i) "Custody" means the restraint of a person pursuant to an arrest.

(j) "Detention" means the temporary restraint of a person by a law enforcement officer.

(k) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof.

(l) "Notice to appear" is a written notice to a person accused by a complaint of having violated an ordinance of a city to appear at a stated time and place to answer to the charge of the complaint.

(m) "Subpoena" is a process issued by the court to cause a witness to appear and give testimony at a time and place therein specified.

(n) "Ordinance traffic infraction" is a violation of an ordinance that proscribes or requires the same behavior as that proscribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118 and amendments thereto.

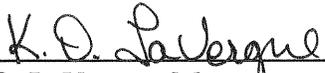
(o) "Warrant" is a written order made by a municipal judge directed to any law enforcement officer commanding the officer to arrest the person named or described in it.

(p) "Ordinance cigarette or tobacco infraction" is a violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto.

Section 3. Severability. If any provision or section of this Charter Ordinance is deemed or ruled unconstitutional or otherwise illegal or invalid by any court of competent jurisdiction, such illegality or invalidity shall not affect any other provision of this Charter Ordinance. In such instance, this Charter Ordinance shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 4. Effective date. This Charter Ordinance shall be published once a week for two consecutive weeks in the Official City newspaper, and shall take effect sixty (60) days after final publication, unless a petition signed by a number of electors of the City equal to not less than ten per cent (10%) of the number of electors who voted at the last preceding regular City election shall be filed in the office of the City Clerk, demanding that this Charter Ordinance be submitted to a vote of the electors, in which event this Charter Ordinance shall take effect when approved by a majority of the electors voting at an election held for such a purpose.

ADOPTED BY THE GOVERNING BODY this 2nd day of December,
1997.



K.O. LaVergne, Mayor

ATTEST:



Patty A. Kroll, City Clerk