

CHARTER ORDINANCE NO. FIFTY-ONE

(Note: All or parts of this charter ordinance have been repealed. See notes at the end of the ordinance.)

A CHARTER ORDINANCE EXEMPTING THE CITY OF OVERLAND PARK, KANSAS, FROM THE PROVISIONS OF K.S.A. 1989 SUPP. 12-4106; K.S.A. 1989 SUPP. 12-4509; AND K.S.A. 12-4511 WHICH RELATE TO THE SENTENCING POWERS OF MUNICIPAL COURT JUDGES AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; REPEALING CITY OF OVERLAND PARK CHARTER ORDINANCE NO. FORTY-EIGHT.

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

SECTION 1. The City of Overland Park, 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 from and make inapplicable to it the provisions of K.S.A. 1989 Supp. 12-4106; K.S.A. 1989 Supp. 12-4509; and K.S.A. 12-4511 relating to the sentencing powers of municipal court judges and hereby provides substitute and additional provisions as set forth herein. Such referenced statutes are applicable to this City but not uniformly applicable to all cities.

*SECTION 2. Municipal judges; powers and duties.

- (a) The municipal judge shall have the power to administer oaths and enforce due obedience to all orders, rules and judgments made by him or her, and may fine or imprison for contempt committed in court or for failure to obey process issued by him or her, in the same manner and to the same extent as the district court.
- (b) The municipal judge shall have the power to hear and determine all cases properly brought before him or her, to grant continuances, to sentence those found guilty to a fine or confinement in jail, or both, to commit accused persons to jail in default of bond, to determine applications for parole, to release on probation, to grant time in which a fine may be paid, to correct a sentence, to suspend imposition of a sentence, to set aside a judgment, to permit time for post trial motions and to discharge accused persons.
- (c) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.
- (d) The municipal judge shall maintain a docket in which he or she shall enter every cause commenced before him or her. Said docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

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- (e) All of the above-listed powers and duties of municipal judges, except those powers and duties set forth in subsection (c), may be modified, restricted, or expanded by ordinances duly enacted by the Governing Body.

SECTION 3. Sentencing.

- (a) Whenever an accused person is found guilty of the violation of an ordinance, the municipal judge may:
 - (1) Release the accused person without imposition of sentence; or
 - (2) Release the accused person on probation after the imposition of sentence without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court; or
 - (3) Impose such sentence of fine, imprisonment, or both, as may be authorized for the ordinance violation.
- (b) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance and there is evidence that the act constituting the violation of the ordinance was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the judge may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the administrative judge of the judicial district or licensed by the secretary of social and rehabilitation services.
- (c) Except as provided in subsection (d), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having violated, while under 21 years of age, an ordinance prohibiting an act prohibited by the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by the statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.
- (d) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (c) are permissive and not mandatory.
- (e) All sentencing options set forth herein and the power of the municipal court judges to implement such sentencing options may be modified, restricted or expanded by ordinances duly enacted by the Governing Body.

SECTION 4. Parole.

The municipal judge may parole any person confined to jail as a result of a conviction of a violation of a city ordinance. The judge may set such conditions and restrictions as he or she sees fit to impose for a term not exceeding one year and may at any time discharge such person for good cause shown.

After notice and hearing, the municipal judge may terminate such parole for violation of conditions by directing the chief of police to execute the sentence and again confine the accused person to jail for the time specified by the court, which shall not exceed the initial sentence imposed, less the time served.

The municipal court judges' authority pursuant to this section may be modified, restricted or expanded by ordinances duly enacted by the Governing Body.

SECTION 5. Charter Ordinance No. Forty-Eight is hereby repealed.

SECTION 6. This ordinance shall be published once each week for two consecutive weeks in the Overland Park Sun, an official City newspaper.

SECTION 7. This is a Charter Ordinance and shall take effect sixty-one days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, subdivision (c)(3) of the Constitution of Kansas, in which case the ordinance shall become effective as approved by a majority of the electors voting thereon.

PASSED by the Governing Body not less than two-thirds of the members elect voting in favor thereof the 19th day of March, 1990.

Ed Eilert, Mayor

ATTEST:

Bernice Crummett, City Clerk

APPROVED AS TO FORM:

Robert J. Watson

City Attorney

Passed: 3/19/90

Published: 3/21/90

3/28/90

Effective: 5/28/90

**Section 2 is repealed by Charter Ordinance No. Sixty-One
Entire ordinance repealed by Charter Ordinance No. Sixty-Six*

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