

Chartering Out of the Public  
Building Commission Act for  
the Construction of a Municipal  
Aquatic Recreational Facility

(Published 2x in *The Horton Headlight* on \_\_\_\_\_, 2008 and \_\_\_\_\_, 2008)

**Charter Ordinance No. 20**

A CHARTER ORDINANCE OF THE CITY OF HORTON, KANSAS EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 12-1758(a) and 12-1767 AND PROVIDING SUBSTITUTE PROVISIONS THEREFORE ON THE SAME SUBJECT RELATING TO PUBLIC BUILDING COMMISSIONS.

**WHEREAS**, the governing body of the City of Horton, Kansas (the “City”) is authorized by Kan. Const. art. 12, §5 to determine its local affairs and government and to elect by Charter Ordinance that the whole or any part of a statutory enactment applicable to the City but not uniformly applicable to all cities shall not apply to the City; and

**WHEREAS**, the City of Horton, Kansas is a municipal city, as defined by the Kan. Const. art. 12, §5, duly created and organized under the laws of the State of Kansas; and

**WHEREAS**, the Kansas Supreme Court has held, in City of Junction City v. Griffin, 227 Kan. 332, 335-36, 607 P.2d 459, 464 (1980), the term *enactment* in Kan. Const. art. 12, §5 refers to the entire act of the Kansas Legislature and “[t]he division into chapter, article and sections in the Kansas Statute Annotated does not have the effect of making separate enactments of a single bill passed by the legislature...”; and

**WHEREAS**, the Public Building Commission Act, K.S.A. 12-1257 et seq., as amended (the “enactment”), applies to the operation of public building commissions within cities in the State of Kansas and certain provisions of the enactment are not uniformly applicable to all cities in that (i) certain provisions of K.S.A. 12-1761, as amended, apply only to cities having a population between 175,000 and 200,000; and (ii) certain provisions of K.S.A. 12-1763 apply only to cities having a population in excess of 50,000 and that lie within a designated urban area; and

**WHEREAS**, because certain provisions of the enactment are not uniformly applicable to all classes of cities, the entire enactment is not uniform under the principles of Junction City v. Griffin, and the City may exempt out of portions of or the entire enactment; and

**WHEREAS**, the governing body of the City desires, by Charter Ordinance, to exempt the City from the provisions of K.S.A. 12-1758, 12-1760, and 12-1767 of the enactment, and to provide substitute and additional provisions therefor in order to provide (a) additional and alternative methods of financing certain public buildings in the City and (b) an exemption from a protest period relating to the authorization of certain revenue bonds for the financing of certain public buildings.

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**NOW, THEREFOR, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HORTON,  
KANSAS, AS FOLLOWS:**

**Section 1. Exemption from K.S.A. 12-1758(a) and Enactment of Substitute Provisions.**

Pursuant to the authority vested in the City under Kan. Const. art. 12, §5, the City hereby elects to exempt from the provisions of K.S.A. 12-1758(a) of the Act, and to provide the substitute and additional provisions in place thereof as follows:

“The City, by appropriate ordinance, may create a public building commission for the purpose of acquiring a site or sites for and constructing, reconstructing, equipping and furnishing, or purchasing or otherwise acquiring, a building or buildings or other facilities of a revenue producing character. Such building or buildings or facilities shall be maintained and operated for (i) a county courthouse, (ii) the housing and accommodation of county agencies, (iii) city offices and such other purposes as are generally carried on in connection with such facilities, (iv) general city buildings, and (v) *public recreational facilities.*”

**Section 2. Exemption from K.S.A. 12-1767 and Enactment of Substitute Provisions.** Pursuant to the authority vested in the City under the Constitution, the City hereby elects to exempt from the provisions of K.S.A. 12-1767 of the Act, and to provide the substitute and additional provisions in place thereof as follows:

“(a) Any revenue bonds proposed to be issued by a public building commission created by the City shall be issued as provided in K.S.A. 10-1201 *et seq.* and amendments thereto, except to the extent that such statutes are in conflict with *this Charter Ordinance or K.S.A. 12-1757 et seq.* Before any revenue bonds are authorized or issued under the provisions of *this Charter Ordinance and K.S.A. 12-1757 et seq.*, the public building commission shall adopt a resolution specifying the amounts of such bonds and the purpose of the issuance thereof.”

“(b)(1) *Except as otherwise provided in subsection (b)(2) of this section*, the resolution shall provide that if within 30 days after the last date of publication of the resolution a petition in opposition to the resolution, signed by not less than 5% of the electors of the City or by not less than 5% of the electors of the county or school district if the lease is with such entity, is filed with the county election officer, the board of county commissioners shall submit the question to the voters at an election called for that purpose or at the next general election. *Except as otherwise provided in subsection (b)(2) of this section*, such resolution shall be published once a

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week for two consecutive weeks in the official city newspaper or in a newspaper having general circulation in the county if the lease with a county or school district.”

“(b)(2) *Notwithstanding the provisions of subsection (b)(1) of this Section, a resolution of a public building commission adopted within one year from the date of this Charter Ordinance authorizing the issuance of revenue bonds to finance the acquisition and construction of a community aquatic recreational facility for the City shall be published one time in the official City newspaper and shall not be subject to the protest and election provided for in subsection (b)(1) of this section.*

“(c) No construction contract shall be let or approved by a public building commission until after the expiration of the protest period provided under this section; *provided that, with respect to revenue bonds authorized by a resolution described in subsection (b)(2) of this section, the public building commission may let or approve a construction contract upon publication of such resolution once in the official City newspaper.*”

**Section 3. Severability.** Any provision or section of this Charter Ordinance that 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 each week for two consecutive weeks in the official City newspaper. This Charter Ordinance shall take effect sixty-one (61) days after its final publication unless a petition signed by not less than 10% of the electors who voted at the last preceding regular City election is filed with the City Clerk requiring a referendum to be held on this Charter Ordinance as provided in Kan. Const. art 12, §5, in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon. Upon its effective date this Charter Ordinance shall be recorded by the City Clerk in a book maintained for Charter Ordinances of the City and shall be filed with the Secretary of State of the State of Kansas.

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**PASSED** by the Governing Body of the City of Horton, Kansas, this 4<sup>th</sup> day of March, 2008, and  
**APPROVED** and **SIGNED** by the Mayor.

CITY OF HORTON, KANSAS

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*Tim Lentz, Mayor, City of Horton, Kansas*

ATTEST:

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*Candy Schmitt, City Clerk, City of Horton, Kansas*

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Unofficial Draft--First Reading

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EXCERPT OF MINUTES

The Governing Body of the City of Horton, Kansas, met at the City Hall at the usual place in the City Hall on the 4<sup>th</sup> day of March, 2008, with Mayor Tim Lentz presiding and the following members of the governing body present:

\_\_\_\_\_  
\_\_\_\_\_

The following members of the governing body were absent:

\_\_\_\_\_  
\_\_\_\_\_

**THEREUPON**, and among other business, there was presented to the governing body, a Charter Ordinance entitled:

A CHARTER ORDINANCE OF THE CITY OF HORTON, KANSAS EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 12-1758(a) and 12-1767 AND PROVIDING SUBSTITUTE PROVISIONS THEREFORE ON THE SAME SUBJECT RELATING TO PUBLIC BUILDING COMMISSIONS.

The Charter Ordinance was considered and discussed, and on motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the Charter Ordinance was adopted by a two-thirds majority vote of all members elect of the governing body.

The Charter Ordinance was assigned No. 20 and directed to be signed by the Mayor and attested by the City Clerk; and the City Clerk was directed to cause the publication of the Ordinance twice as set forth therein and required by law.

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CITY CLERK'S CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of the Minutes of the proceedings at the \_\_\_\_\_ meeting of the governing body of the City of Horton, Kansas

(SEAL)

By: \_\_\_\_\_  
Candy Schmitt, City Clerk, City of Horton, Kansas

Unofficial Draft--First Reading

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PASSED, APPROVED AND ADOPTED by two-thirds majority of the Governing Body of the City of  
Horton, Kansas on this 4<sup>th</sup> day of March, 2008.

CITY OF HORTON, KANSAS

By: \_\_\_\_\_  
*Tim Lentz, Mayor, City of Horton, Kansas*

ATTEST:

By \_\_\_\_\_  
*Candy Schmitt, City Clerk, City of Horton, Kansas*

Unofficial Draft--First Reading