

CHARTER ORDINANCE NO. 31

**A CHARTER ORDINANCE OF THE CITY OF ARKANSAS CITY EXEMPTING SUCH CITY FROM THE PROVISIONS OF K.S.A. 14-10a02 RELATING TO LOST OR MISLAID PROPERTY, 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 Arkansas City, 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. 14-10a02 is a part of an enactment of the Kansas Legislature (K.S.A. 14-1101 *et seq.*) relating to use of funds of lost property; and

**WHEREAS**, that statute authorizes the proceeds of unclaimed property to be placed into the police and fire pension funds; and

**WHEREAS**, the City of Arkansas City desires to provide an exception to encourage good Samaritans to turn in lost or mislaid property to Arkansas City Police Department and make claim to that property if unclaimed by the rightful owner.

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

**Section 1. Exemption-K.S.A. 14-10a02.** 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. 14-10a02 and does hereby provide the following substitute and additional provisions in place thereof (substitute provisions in italics; deleted provisions struck through):

The governing bodies of all cities of the second class, with a population in excess of 6,000 located in counties having a population of 10,000 or more, maintaining an organized police and fire department, may establish and maintain a separate pension fund for each department, which shall be set aside and used exclusively for the payment of pensions and disability benefits as authorized in K.S.A. 14-10a01 *et seq.*, and amendments thereto. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified in a way that precludes employer discretion. Each such pension fund shall be maintained and funded in accordance with the minimum funding standards prescribed in K.S.A. 12-5002, and amendments thereto. For the purpose of creating, maintaining and funding such pension funds, *or to fund the Special Law Enforcement Trust Fund*, the governing body of each such city of the second class is hereby authorized and shall:

- (a) Accept gifts, grants, bequests, gratuities or any other money and credit the same to the pension fund designated by the donor;
- (b) levy an assessment against each officer and member of each department equal to 7% of such officer's or member's monthly salary or compensation, such assessment amount to be deducted from the regular payroll and to be transferred into such pension fund;
- (c) place into such funds, *or if none, then the Special Law Enforcement Trust Fund*, the proceeds of all lost or stolen securities, money or personal property which shall remain unclaimed in possession of any department of the city for *ninety days* ~~six months~~, together with the proceeds of all unclaimed or confiscated property of any nature which shall have been in custody of the police department for a

period of *ninety days* ~~six months~~. The city is authorized to sell at public auction such property and place the proceeds into such pension funds in equal shares *except that: (1) the Arkansas City Police Department may return lost or mislaid property with no known owner to any person submitting same to the Department, if unclaimed by its owner within ninety days; and (2) if the time and expense of a public auction shall exceed the anticipated proceeds, the Police Chief may use his or her discretion to sell in any manner or otherwise dispose of the items, including donation of any such personal property to a charitable organization.*

(d) transfer into such pension funds the unencumbered balance, including investments, in any existing pension fund or funds, except that if there is more than one pension fund existing in such city then each of such existing funds, other than the firemen's and policemen's relief funds, shall be transferred into the new pension fund of a like classification. Upon the termination of any pension fund or funds, the rights of members to benefits accrued at the date of termination to the extent funded or to the amount in members' accounts at the date of termination are nonforfeitable;

(e) carry forward the balance in such funds at the close of each budget year as revenue for the next ensuing year;

(f) transfer into said fund any proceeds from any municipally owned utility at the discretion of the governing body;

(g) levy annually at the time for the levying of taxes for city purposes, a tax upon all of the taxable tangible property in such city for each pension fund to make annual contributions to each pension fund as required under K.S.A. 12-5002, and amendments thereto, and to maintain and fund each pension fund on an actuarial reserve basis in accordance with the provisions of K.S.A. 14-10a05, and amendments thereto, and to pay a portion of the principal and interest on bonds issued by such city under the authority of K.S.A. 12-1774, and amendments thereto. In lieu of levying the tax authorized in this section, the annual contribution required of the city may be paid from any employee benefits contribution fund established pursuant to K.S.A. 12-16,102, and amendments thereto; and

(h) administer such funds in the manner required to satisfy the applicable qualification requirements for governmental plans as specified in the federal internal revenue code of 1954 or 1986, as in effect on July 1, 2008, and as applicable for a governmental plan in accordance with the provisions of K.S.A. 74-49,123, and amendments thereto.

*(i) To the extent any general provision of Kan. Stat. Ann. 58-3934 et seq. or Kan. Stat. Ann. 22-2512 shall conflict with any provision hereunder, this Charter Ordinance shall prevail.*

**Section 2. 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 or section of this Charter Ordinance. In such instance, this Charter Ordinance shall be construed and enforced as if such illegal or invalid provision or section had not been contained herein.

**Section 3. 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 percent (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.

**PASSED** by the governing body of the City by not less than two-thirds of the members-elect of the governing body on September 20, 2016 and signed by the Mayor.

(SEAL)

Duane L. Oestmann, Mayor

ATTEST:

Lesley Shook, Clerk

DRAFTED AND APPROVED AS TO FORM:

Tamara L. Niles, City Attorney