

STATE OF SOUTH CAROLINA  
CITY OF UNION

ORDINANCE NO. 2020-\_\_

**AN ORDINANCE TO REVISE CHAPTER 15 *MUNICIPAL COURT* OF THE CITY OF UNION CODE OF ORDINANCES IN CERTAIN LIMITED REGARDS AND PARTICULARS, ONLY; TO AUTHORIZE THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN UNION COUNTY AND THE CITY OF UNION FOR THE PROVISION OF A COUNTY MAGISTRATE TO ACT AS MUNICIPAL JUDGE FOR THE CITY OF UNION; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, pursuant to the authority established in § 5-1-10 of the Code, the City of Union (the "City") is a municipality of the State of South Carolina and Union County, and is declared to be a perpetual body, politic and corporate, entitled to exercise all the powers and privileges provided for a municipal corporation in the State of South Carolina; and,

**WHEREAS**, the City has established a municipal court, which is part of the South Carolina unified judicial system, to hear and determine all cases within its jurisdiction; and,

**WHEREAS**, Union County, South Carolina ("Union County"), is a body politic and corporate and a political subdivision of the State of South Carolina; and,

**WHEREAS**, pursuant to §14-25-25 of the South Carolina Code of Laws, 1976 as amended (the "Act"), a municipality may, after establishing a municipal court by ordinance, contract with a county governing authority for the services of a magistrate to preside over its municipal court; and,

**WHEREAS**, although the City has appointed municipal judge(s) who preside(s) over the City's municipal courts, the City acknowledges that the Union County Magistrate's Office ("County Magistrate's Office") has the capability to provide the City with county magistrates to preside over the municipal court from time to time on an as needed basis, and to hear and determine all cases under the City's jurisdiction, thereby providing this vital service to the citizens of the City on an uninterrupted basis with maximum cost efficiency; and,

**WHEREAS**, the City is willing to compensate Union County for providing the City with county magistrates to preside over the municipal court from time to time as needed; and,

**WHEREAS**, the County Magistrate's Office is willing to provide the City with county magistrates, to preside over the municipal court, to hear and determine cases under the City's jurisdiction, and to perform other necessary judicial functions; and,

**WHEREAS**, the City recognizes that such an arrangement would efficiently serve the taxpayers of both governmental entities; and,

**WHEREAS**, the Chief Magistrate of Union County has agreed to seek an Order of the Chief Justice of the South Carolina Supreme Court authorizing the Chief Magistrate of the County to assign any magistrate of the County to preside over the municipal court from time to time; and,

**WHEREAS**, through the authority granted by the Act, the City and Union County desire to enter into an intergovernmental agreement (the "Agreement") in the form attached as Exhibit A, and incorporated by this reference; and

NOW, THEREFORE, it is hereby ordained, by City Council, in meeting duly assembled that:

1. Section 15-2, *Judge—Appointment and term* of Chapter 15 of the City of Union Code of Ordinances is hereby revised and amended, to read:

"Council may appoint such municipal judge(s) as it deems necessary for a term of not less than two (2) nor more than four (4) years or until a successor is appointed and qualified. The compensation of the municipal judge appointed by Council shall be fixed by council at the time of appointment and shall not be diminished during the term of office, but may be increased during any such term. In addition, in accordance with S.C. Code § 14-25-25, Council may contract with the County to authorize a magistrate to preside over the Municipal Court, either exclusively, or in addition to such municipal judges appointed by Council. Such magistrate shall be appointed on an as needed basis and compensated in accordance with the Union County Intergovernmental Agreement contract and state law."

2. The City, acting by and through the City Council, hereby acknowledges and accepts the Agreement.
3. The City Administrator is hereby authorized to execute and deliver the Agreement on behalf of the City and may take all other steps and actions as are necessary or appropriate to enter into and enforce the Agreement.
4. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.
5. All ordinances, orders, resolutions, and actions of City Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded.
6. This Ordinance shall take effect and be in full force and effect from and after second reading and enactment by City Council.

ORDAINED in meeting, duly assembled, this 18<sup>th</sup> day of August, 2020.

ATTEST:

Gloria Rogers  
Gloria Rogers  
Clerk to Union City Council

Harold E. Thompson  
Harold E. Thompson,  
Mayor, The City of Union

First Reading: July 21, 2020  
Second Reading: August 18, 2020  
Public Hearing: \_\_\_\_\_

## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this 21 day of July, 2020, by and between Union County, South Carolina (the "County"), and the City of Union, South Carolina, (the "City").

WHEREAS, the City has established a municipal court, which is part of the South Carolina unified judicial system, to hear and determine all cases within its jurisdiction; and,

WHEREAS, pursuant to §14-25-25 of the South Carolina Code of Laws, 1976, as amended (the "Act"), a municipality may, after establishing a municipal court by ordinance, contract with a county governing authority for the services of a magistrate to preside over its municipal court; and,

WHEREAS, although the City has appointed municipal judge(s) who preside(s) over the City's municipal courts, the City acknowledges that the Union County Magistrate's Office ("County Magistrate's Office") has the capability to provide the City with County magistrates to preside over the municipal court from time to time on an as needed basis, and to hear and determine all cases under the City's jurisdiction, thereby providing this vital service to the citizens of the City on an uninterrupted basis with maximum cost efficiency; and,

WHEREAS, the City is willing to compensate the County for providing the City with County magistrates to preside over the municipal court, from time to time as needed, and the Mayor, Administrator, and City Council of the City have formally requested a contractual arrangement with the County so that the County Magistrate's Office is authorized to make magistrates available to provide the service required by the City; and,

WHEREAS, the County and the County Magistrate's Office are willing to provide the City with County magistrates, to preside over the municipal court, to hear and determine cases under the City's jurisdiction, and to perform other necessary judicial functions; and,

WHEREAS, the County and the City recognize that such an arrangement would efficiently serve the taxpayers of both governmental entities; and,

WHEREAS, the Chief Magistrate of the County (also known as the Chief Summary Court Judge for Administrative Purposes for Union County) (the "Chief Magistrate") has agreed to seek an Order of the Chief Justice of the South Carolina Supreme Court (the "Order"), pursuant to the Chief Justice's powers as administrative head of the unified judicial system, authorizing the Chief Magistrate to assign any magistrate of the County to preside over the municipal court from time to time; and,

WHEREAS, through the authority granted by the Act, and in accordance with the Order to be obtained by the Chief Magistrate, the City and the County desire to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the City and the County agree as follows:

**1. Authorization of Services Provided by the County Magistrate's Office:**

- a. The County and the City agree to authorize the Chief Magistrate to assign County magistrates, by and through the Order, to preside over the municipal court from time to time, in addition to the assigned magistrates' normal duties as magistrates for the County.
- b. An assigned magistrate will:
  - i. Hold court on an as needed basis and with a schedule to be assigned by the County Magistrate's Office; and,
  - ii. Conduct jury and bench trials for the City on an as needed basis and with a schedule to be assigned by the County Magistrate's Office; and,
  - iii. Issue arrest warrants and search warrants on an as needed basis and with a schedule to be assigned by the County Magistrate's Office; and,

- iv. Hold bond hearings on an as needed basis and with a schedule to be assigned by the County Magistrate's Office; and,
  - v. Be on call, but only within the hours prescribed for the conduct of his or her duties for the City and not as an extension of his or her County hours, it being understood and agreed by all parties hereto that the assigned magistrates' duties presiding over any matter under the City's jurisdiction are in addition to, separate, and apart from his or her duties as a magistrate for the County for purposes of pay and determination as a full-time or part-time magistrate for the County; and,
  - vi. Take any prescribed oath necessary to provide services to the City; and,
  - vii. Always handle any duties in connection with the County Magistrate's Office first, should the regular duties of the assigned magistrate conflict with providing services to the City.
- c. The City and the Chief Magistrate agree to comply with any notification and appointment requirements under state law, including any applicable requirements set forth in §14-25-15 of the South Carolina Code of Laws, 1976, as amended.
  - d. The County, the City and the Chief Magistrate agree that the assigned magistrates shall not be considered an agent or employee of the City for any purpose, and shall not be entitled to any of the fringe benefits that the City may provide for employees.
  - e. The County, the City and the Chief Magistrate agree that any assignment made pursuant to this Agreement shall be strictly temporary, will not be considered an appointment under §14-25-15(A) of the South Carolina Code of Laws, 1976, as amended, and will not establish any term of appointment.
  - f. The County, the City and the Chief Magistrate agree that all planning, organization, scheduling, direction and supervision of assigned magistrates and all matters instant to the operation of the County Magistrate's Office and the City's municipal court are under the direction and control of the South Carolina Court Administration and the South Carolina Supreme Court.

**2. Services Provided By County:** The County agrees that it will implement a system whereby the County will pay the assigned magistrate(s) additional, clearly separable compensation solely for such additional duties for the City, over and above, and not as a part of the compensation received by such assigned magistrate for his or her duties as magistrate pursuant to §22-8-40 of the South Carolina Code of Laws, 1976, as amended, and the assigned magistrate will sign a document acknowledging that the compensation is separable and solely for such additional duties as municipal judge.

**3. Reimbursement for Municipal Judges and Responsibilities of City:**

- a. The City shall reimburse the County for all costs associated with the assignment of magistrate(s) under this Agreement after September 1, 2020.
- b. The City acknowledges and understands that the County will not be responsible for any licenses/permissions and equipment needed to implement and utilize the South Carolina Judicial Department Case Management System for the City.
- c. The City acknowledges and understands that the assigned magistrates will still have his or her regular duties in connection with the County Magistrate's Office, for which the assigned magistrates will receive his or her usual County pay pursuant to §22-8-40 of the South Carolina Code of Laws, 1976, as amended.
- d. The City acknowledges that, in the sole discretion of the Chief Magistrate, any activities of the assigned magistrates pursuant to this Agreement may be conducted at any location designated by the Chief Magistrate as deemed necessary in the furtherance of justice.



4. **Disposition of Fines and Penalties:** Pursuant to §22-1-70 of the South Carolina Code of Laws, 1976, as amended, the County agrees that the portion of fines and penalties imposed and collected by an assigned magistrate while providing judicial services for the City that is turned over to the treasurer of the City shall be 100%.

5. **Term of Agreement:** The term of this Agreement will commence on August 1, 2020, and shall thereafter be renewed automatically on a monthly basis.

6. **Termination of Agreement:** Either party may terminate this Agreement with thirty (30) days written notice of termination. This Agreement is always subject to appropriation of funds. In the event of non-appropriation by either party, this Agreement will be deemed terminated ninety (90) days following such non-appropriation.

7. **Notice to the County and the City:** Unless otherwise specifically provided in this Agreement or by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party to this Agreement shall be in writing and shall be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or in lieu of such personal delivery, when three (3) business days have elapsed following deposit thereof in the United States mail, first-class postage prepaid, certified, return receipt requested, addressed to:

County:	Supervisor Union County 210 West Main Street Union, SC 29379	(with copy to):	Chief Magistrate Union County Magistrate's Office 210 West Main Street Union, South Carolina 29379-2215
	City:	Administrator City of Union P.O. Box 987 Union, SC 29379	

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

8. **Breach of Agreement:** Failure of either party to perform any of its covenants or conditions under the Agreement is a breach of the Agreement, and, in the event of breach, the non-breaching party will have the right to any legal remedy provided under the laws of the State of South Carolina.

9. **Unavoidable Delay - Force Majeure:** If either party shall be delayed or prevented from the performance of any act required by this Agreement by reason of acts of God, acts of war, terrorist acts, civil unrest, riots, newly announced or enacted governmental restrictions, labor disputes which are regional or national in scope (excluding disputes with laborers employed by the party claiming delay), abnormal adverse weather conditions not reasonably anticipated, unavoidable material shortages, governmental shutdowns, forced closures of private business or governmental offices by governmental authorities, flu, epidemic, serious illness or plagues, pandemic, disease, state or national health emergency or similar outbreak, fire or other unavoidable casualty loss, and any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing (financial inability excepted), performance of such act will be excused for the period of the delay; and the period for the performance of any such act will be extended for a period equivalent to the period of such delay; provided, however, nothing in this section shall excuse the City from the prompt payment of any fee or other charge required of the City except as may be expressly provided elsewhere in this Agreement.

10. **Inconsistent Terms:** To the extent that any provisions of the City's or the County's ordinances are inconsistent with the terms of the Agreement, the City or the County will waive said ordinance provisions and said provisions will not apply to the City or County for purposes of this agreement, its terms and

provisions, application and implementation. The Agreement shall be approved by ordinances enacted by the City and the County, in order to constitute binding legal authority of each.

11. **Severability of Agreement:** In the event any portion of this Agreement is declared invalid or unenforceable, the remaining portions hereof shall remain in full force and effect.

12. **Waivers and Amendments to Agreement:** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

13. **No Waiver of Breach:** No failure by either the County or City to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

14. **Captions:** Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof.

15. **Controlling Law:** This Agreement shall be construed and enforced under the laws of the State of South Carolina.

UNION COUNTY

BY:

Frank Hart

ITS: Supervisor

DATED:

7/21/20

CHIEF MAGISTRATE

BY:

The Honorable David Kevin Morrow

DATED:

7/21/20

CITY OF UNION

BY:

Joe Nichols

ITS: Administrator

DATED:

7/21/20