February 16, 2024

VIA EMAIL TO S.FED.STATE.AFFAIRS@SENATE.KS.GOV

The Honorable Mike Thompson, Chair
Senate Committee on Federal and State Affairs
Kansas State Senate
300 SW 10th Avenue
Topeka, Kansas 66612

RE: City of Westwood, Kansas, Opposition to Senate Bill No. 474

Dear Senator Thompson:

On behalf of the Governing Body of the City of Westwood, Kansas, I wish to advise the Senate Committee on Federal and State Affairs of the City's opposition to Senate Bill No. 474. As drafted, and among other things, this bill would amend K.S.A. 12-3013 to allow initiative petitions for "administrative" ordinances. This would be bad public policy and would lead to numerous and superfluous initiatives which, in many cases, would cause confusion in municipal laws and which could very well violate Kansas laws, without any remedies for cure.

Neither K.S.A. 12-3013 nor Senate Bill No. 474 define the term "administrative ordinance". Kansas courts have established detailed steps for determining whether an ordinance is "administrative" or "legislative", with the Kansas Supreme Court most recently establishing the factors in the case of *McAlister v. City of Fairway*, 289 Kan. 391 (2009):

1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.

2. Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.

3. Decisions which require specialized training and expertise in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of policy.

4. If the subject is one of statewide concern in which the legislature has delegated decisionmaking power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an "administrative" characterization, and hence is outside the scope of the initiative and referendum statute.

What these factors make clear is that, when it comes to "administering" laws and conducting city operations, there are matters which are not appropriate for referenda, particularly as such referenda—written without the

experience of trained city staff, city planners, city attorneys, and elected officials—may lead to violations of Kansas law. By way of example only, consider the following examples:

- Recently, in one Johnson County city, a draft petition was prepared by a resident and submitted to the Johnson County Counselor's office that would have established incredibly high license fees for rental properties. However, that proposed administrative ordinance did not consider Kansas law that limits a city's ability to levy license fees above and beyond what is reasonably necessary for a city to administer its rental property regulations, such that the proposed fees would have been an illegal "tax" instead.

- Also in Johnson County, a petition was recently circulated and submitted that would have changed certain zoning regulations outside of the process established by K.S.A. 12-741 *et seq.* That conflict with established Kansas statutory procedures was, in and of itself, problematic. However, the proposed administrative ordinance went even further, impacting other myriad parts of that city's zoning regulations, creating actual legal conflicts among portions of the city code, and rendering other portions nonsensical. Aspects of the petition affecting a city's ability to administer zoning regulations also likely conflicted with the Federal Fair Housing Act and Kansas statute (K.S.A. 12-736) on group homes and persons with disabilities, and their rights to benefit from single-family housing living arrangements.

- One can also easily imagine proposed administrative ordinances proposed for punitive reasons that would create or modify city codes on the hiring of professional staff (perhaps even requiring the firing of certain staff members, or the elimination of departments), the management of police departments ("defund" the police), forcing the construction of projects for which a city may not have available monies, or forcing the closing of businesses that petitioners may have issues with (quarries, manufacturers, etc.). All such scenarios could conflict with Kansas law or, because they impact the actual administration of Kansas law, and because petitioners may not be trained in the complexities of city administration, create confusion and inconsistent legislation.

Simply put, the Legislature should not open cities up to referenda on administrative ordinances that would conflict with Kansas law or cause wholesale conflicts in the administration of law. Certainly, we do not expect that the Kansas Legislature would consider subjecting itself to petitions on administrative matters. Responsibility for such administrative ordinances is best left to elected officials, who are answerable to their constituents, and to professional staff, who are highly-educated and trained in the field of public administration.

These issues are exacerbated by the fact that, under K.S.A. 12-3013(c), ordinances adopted by initiative petition may not be repealed or amended except by a vote of the electors, or by the governing body if in effect for ten (10) years. While blatantly illegal ordinances may be able to be challenged in court (of course, only after an election process has already been undertaken, creating unnecessary court actions and expense), ordinances that are simply poorly-drafted by petition circulators or that create conflicts with other legislation or administrative procedures would not be able to, wreaking havoc on a city's ability to operate.

The Kansas Court of Appeals recently recognized these important concerns, describing the initiative process as follows:

> The Kansas Initiative and Referendum statue, K.S.A. 12-3013, establishes a powerful procedure by which residents may more directly influence legislative decisions by petitioning the city government to adopt new policies or repeal existing ones. …
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> Given the power and lasting effect of an initiative petition—compelling the adoption of a policy by some percentage of previous voters, but potentially less than the voting majority who elected the city council members—Kansas law imposes various procedural safeguards to ensure "the validity of the proponents' support." *State ex rel. Schmidt v. City of Wichita*, 303 Kan. 650, 664, 367 P.3d 282 (2016). For example, the initiative petition must be accompanied by the specific language of the proposed ordinance so those signing the petition "have the opportunity to become fully aware

of the exact, unalterable ordinance being proposed to become the law of their city". 303 Kan. at 663, 367 P.3d 282. …

City of Wichita v. Peterjohn, 62 Kan.App.2d 750, 754-55 (2022).

Accordingly, we strongly urge the Senate Committee on Federal and State Affairs, as well as the entire Kansas Legislature, to reject Senate Bill No. 474. Thank you for your consideration.

Sincerely,

David E. Waters, Mayor
City of Westwood, Kansas
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Westwood, Kansas 66205
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cc: Leslie Herring (via email to leslie.herring@westwoodks.org)
Senator Ethan Corson (via email to ethan.corson@senate.ks.gov)
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