THE LEAGUE OF KANSAS MUNICIPALITIES

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To: Senate Ethics, Elections, and Local Government

From: John Goodyear, Staff Attorney

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RE: Opposition Testimony to SB 248

I want to thank Chairwoman Bowers and the Committee members for allowing the League of Kansas Municipalities the opportunity to provide opposition testimony for SB 248.

SB 248 would require the initiating governing body of any city or county that proposes to enter into an inter-local cooperation agreement with a city or county regarding a city establishing extraterritorial zoning or subdivision regulations to give individualized written notice to all owners of record in the area where the proposed extraterritorial zoning or subdivision regulations would be applied at least 20 days prior to the required public hearing. The bill clarifies that the initiating governing body must mail a copy of the notice to all owners of record in an unincorporated area if any proposed subdivision regulations involve land in any unincorporated area.

The League reached out to our members and heard that this proposed legislation would have a detrimental effect in moving forward with any future inter-local agreement between cities and counties on development matters outside the city. For the City of Topeka, the cost for 1st class mail is about $8,100 every time the city has to provide notice to the 14,800 properties within the 3-mile area. As written the bill would also require notice to these 14,800 properties every time the city makes a change to its subdivision regulations or zoning regulations regardless of whether the proposed change solely impacts these properties or if it is applicable to all areas of the city.

For a city the size of Basehor, there are 1,895 parcels located within the 3-mile radius of the city. If the notices could be sent by 1st class mail it would cost about $930 a mailing; however, because the bill does not specify these can be sent by 1st class mail, a city ideally would need to send these by certified mail to help prevent litigation arguing the notice was not received. Without a safe harbor provision holding a city harmless for a particular property owner not receiving notice, any zoning change made by the city could be in jeopardy if challenged at a later date. This would include all zoning changes regardless of whether the change affected more than the residents inside the three miles outside of the city. In order to ensure a landowner could not later argue a notice was not received, and provide certainty for its residents, the city would need to send these notices by certified mail. If these notices were sent via certified mail, it would cost approximately $12,920 per mailing in Basehor.

While we understand the purpose behind the proposed legislation and agree increased transparency is good, we question whether the increased cost which will have to be borne by increased property taxes is worth the benefit.

There has been quite a bit of misunderstanding around the process of extraterritorial zoning. Because of that, we have attached to our testimony a handout explaining the basics. The concept of extraterritorial zoning really began to develop in the 1950s following an uptick in development after World War II. As cities began to expand across the nation, the public was faced with a choice: the annexation of large sections of undeveloped land in order to provide for orderly future development; haphazard development with myriad nonconforming uses, non-strategically planned roads, utilities, etc.; or coming up with a middle ground solution.

The "middle ground" solution that developed was the concept of extraterritorial zoning. State legislatures across the United States began extending to municipalities the power to extraterritorial zone in the 1950s and 1960s. In Kansas, cities were given the power to extraterritorial zone in 1969 in KSA 12-715b. This has only been modified once to deal with floodplains in 1991.

The statute requires the establishment of a planning commission with representation from the County. It also establishes limits on the zoning. For example, a city cannot adopt any regulations to or affecting any land in excess of three acres under one ownership that is used for agricultural purposes. The history behind this is that it helps plan for the future. It helps avoid unnecessary annexation of undeveloped land and is key for long term protection of public health, safety, and welfare. A city can adopt zoning regulations for the area if the county has not adopted its own similar regulations for the area or if the county has excluded the area. The current process has lots of opportunities for the citizens to be informed and was written to give counties substantial power in the process.

We would hate for such an important tool for forward thinking development to be gutted due to increased costs that can only be covered by raising property taxes. Proactive planning for development can provide efficiencies for governments and minimized costs for taxpayers. Making zoning costs prohibitive does not serve anyone well. The League asks the committee to find a reasonable path on notice provisions should this bill move forward. At a minimum, we ask this Committee amend the bill to make it clear these notices can be sent via 1st class mail and that no change can be struck due to a resident not receiving notice if the city can show it made a good faith effort to notify all required individuals.

We would respectfully ask that this Committee not pass out SB 248 to the full Senate for consideration.

Extraterritorial Zoning Basics

Amanda Stanley, General Counsel

1. The concept of extraterritorial zoning really began to develop in the 1950s following an uptick in development after World War II. As cities began to expand across the nation, the public was faced with a choice, the annexation of large sections of undeveloped land in order to provide for orderly future development, haphazard development with a myriad of nonconforming uses, non-strategically planned roads, utilities, etc., or come up with a middle ground something else. The something else that developed was the concept of extraterritorial zoning. Extraterritorial zoning was developed to provide a middle ground. State legislatures across the United States began extending to municipalities the power to extraterritorial zone in the 1950s and 1960s. In Kansas, cities were given the power to extraterritorial zone in 1969 in **KSA 12-715b**. This has only been modified once to deal with floodplains in 1991. The statute requires the establishment of a planning commission with representation from the County. It also establishes limits on the zoning for example a city cannot adopt any regulations to or affecting any land in excess of three acres under one ownership that is used for agricultural purposes. History behind this is that it helps plan for the future. It helps avoid unnecessary annexation of undeveloped land, prevents haphazard development and establishment of a myriad of non-conforming uses, and is key for long term protection of public health, safety, morals and welfare. A city can adopt zoning regulations for the area if the county has not adopted its own similar regulations for the area or if the county has excluded the area.
2. **KSA 12-715d** gives the County unilateral ability to stop a city from acting in the extraterritorial area.
3. Representation for if the City exclusively zones the extraterritorial area
    a. **KSA 12-744(a)** provides that "if a city planning commission plans, zones, or administers subdivision regulations outside the city limits, at least two members of such commission shall reside outside of, but within three miles of, the corporate limits of the city."
        i. While cities still have the power to set the number of members on the planning commission, you are guaranteed by statute that two members of the commission will be from outside of the city.
4. In addition to zoning, since 1991 a city can enforce subdivision regulations in this extraterritorial area. These are key for managing the timing of developments by requiring a showing there are adequate existing or planned public facilities to support the proposed development.

a. **KSA 12-749(a)** "following the adoption of a comprehensive plan, a city planning commission may adopt and amend regulations governing the subdivision of land."
    i. This includes land within three miles of the city limits.
b. **KSA 12-749(b)** "Subdivision regulations may include, but not be limited to, provisions for: (1) Efficient and orderly location of streets; (2) reduction of vehicular congestion; (3) reservation or dedication of land for open spaces; (4) off-site and on-site public improvements; (5) recreational facilities which may include, but are not limited to, the dedication of land area for park purposes; (6) flood protection; (7) building lines; (8) compatibility of design; (9) stormwater runoff, including consideration of historic and anticipated 100-year rain and snowfall precipitation records and patterns; and (10) any other services, facilities and improvements deemed appropriate."
    i. In other words, the planning commission has broad authority to make provisions that will advance an adopted comprehensive plan.
        1. **KSA 12-750** lays out the additional requirements when a city's governing body proposes to adopt subdivision regulations affecting property lying outside of the city and governed by county regulations. It requires representation from the city and county.

5. Also, since 1991, building codes can be enforced in the extraterritorial region under **KSA 12-751(a);** however, there is an ability for the enforcement of these to go to election upon petition by 20% of the electors in the extraterritorial region. If the election fails a city cannot bring another proposal for 4 years.
6. **General Improvements KSA 12-693** "all cities are hereby authorized to make improvements authorized by and in the manner provided for in the general improvement and assessment law as contained in chapter 12 article 6a of the KSA, in those unincorporated areas beyond their corporate limits and within three miles thereof. Before any such improvements shall be made: (1) The city shall have adopted, in the manner provided by law, regulations governing the subdivision of land in such unincorporated area; (2) the city shall have obtained the county's consent to making such improvements; or (3) 100% of the property owners located outside the city limits and benefited by such improvements shall have signed a petition requesting that the city make such improvements."
    a. **Special Improvement Districts KSA 12-693(b)** (in part) "Improvements within such three mile area located in a proposed improvement district which is wholly outside the corporate limits of the city shall be **commenced only upon a petition** submitted pursuant to K.S.A. 12-6a04, and amendments thereto, signed by both a

majority of the owners of record of property and the owners of record of more than one-half of the area liable for special assessment under the proposal." If the area to be improved is fully outside the city limits, the city cannot choose to make improvements unilaterally. The improvements can only be commenced by a petition, signed by a majority of the owners of the property to be improved and more than one-half of the area liable for the special assessment.

7. **So, what if the County doesn't want to exclude the area from its zoning, or already has zoning but wants a more comprehensive plan that involves the city? This is where Interlocal Agreements for Joint, Metropolitan, Regional, and Bi-State Planning Commissions Come into Play.** The purpose is to allow local government to make the most efficient use of their powers by allowing them to cooperate. **KSA 12-744** passed in 1991 allows two or more cities or counties to form metropolitan or regional planning commissions under **KSA 12-2901** (Kansas Interlocal Cooperation Act). These are important when a city and county want to work together in the performance of their planning powers, duties, and functions. An interlocal agreement between the city and the county would require the City to pass an ordinance and the County to pass a resolution entering into the agreement. The agreement is then sent to the AG for approval. Then prior to taking force, the agreements are filed with the register of deeds of the county and the Secretary of State.
    a. **Examples:** Wichita-Sedgwick County Metropolitan Area Planning Commission, looks like Lawrence and Douglas County, Manhattan Urban Area Comprehensive Plan (City of Manhattan, Riley and Pottawatomie County); Junction City/ Geary County/ City of Milford Metropolitan Planning Commission and Board of Zoning Appeals; Harper County / Cities of Attica, Danville and Harper, City of Saint Mary's and Pottawatomie County appear to have an interlocal agreement, City of Eudora and Douglas County, City of Augusta and Butler County, City of Ottawa and Franklin County, City of Mission and Unified Government of Wyandotte County/ KCK, Miami County and Paola