



January 29, 2024

VIA EMAIL TO S.LOCAL.GOV@SENATE.KS.GOV

The Honorable Carolyn McGinn, Chair
Senate Committee on Local Government
Kansas State Senate
300 SW 10th Avenue
Topeka, Kansas 66612

RE: City of Westwood, Kansas, Opposition to Senate Bill No. 346

Dear Senator McGinn:

On behalf of the Governing Body of the City of Westwood, Kansas, I wish to advise the Senate Committee on Local Government of the City's opposition to Senate Bill No. 346. As drafted, and among other things, this bill would provide (with italics and strike-throughs in the original bill draft) that, "If such proposed amendment is not a general *upzoning or downzoning* revision of the existing regulations and affects specific property, the *rezoning* amendment ~~may~~ *shall only* be initiated by application of the owner or property affected."

The proposed amendments conflict with Kansas law in several ways, including that the Kansas planning and zoning act (K.S.A. 12-741 *et seq.*) provides that cities and counties themselves may enact planning and zoning laws and regulations "for the protection of the public health, safety and welfare". K.S.A. 12-741(a). Furthermore, under long-standing Kansas law, cities have the right to "prescribe zoning, the right to change zoning and the right to refuse to change zoning." *Golden v. City of Overland Park*, 224 Kan. 591, 595 (1978) (citing *Arkenberg v. City of Topeka*, 197 Kan. 731, 734-35 (1966)). The Kansas Legislature should continue to allow local cities and counties to make these determinations.

The bill also directly conflicts with K.S.A. 12-755, specifically subsection (a)(6), which authorizes cities to adopt regulations that "establish overlay zones". As you may know, cities regularly establish special overlay zones in limited areas to address unique needs that may not be able to be handled through traditional zoning categories, such as historic downtowns or special commercial areas. K.S.A. 12-755, therefore, allows cities to effectively manage contemporary land-use challenges and exhibit creativity in addressing a community's needs. By way of example only, the City of Westwood (together with Kansas City, Kansas, and Roeland Park, Kansas) long ago cooperatively established an overlay district for the 47th Street/County Line Road corridor, which serves all three municipalities. As written, Senate Bill No. 346 would appear to prohibit cities from itself creating new zoning and overlay districts of this kind, and as permitted by K.S.A. 12-755, creating a confusing conflict.

In addition, and notwithstanding that zoning regulations may change as to an entire zoning district or merely a particular piece of property, in order to avoid violation of constitutional provisions preventing the taking of private property without compensation, zoning regulations must permit continuation of uses of land which existed at the time the regulation was adopted. Such uses, which continue after the effective date of a new zoning regulation, even though they no longer comply with the new regulations, are referred to as legal or valid "nonconforming uses." With certain limitations, nonconforming uses are already protected by statute at K.S.A. 12-758, rendering Senate Bill No. 346 unnecessary as to that concern.

We strongly urge the Senate Committee on Local Government, as well as the entire Kansas Legislature, to reject Senate Bill No. 346. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "David E. Waters". The signature is fluid and cursive, with the first name "David" being the most prominent.

David E. Waters, Mayor
City of Westwood, Kansas
4700 Rainbow Boulevard
Westwood, Kansas 66205
david.waters@westwoodks.org

cc: Leslie Herring (via email to leslie.herring@westwoodks.org)