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To: Senate Commerce Committee

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Subject: **SB 366** – Supporting Legislation to Protect Kansas Property Owners by Prohibiting Cities and Counties from Adopting Price Control Mandates on the Purchase or Sale of Private Property

Chairperson Lynn and members of the Senate Commerce Committee, thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® in support of **SB 366**, which would protect Kansas property owners from unnecessary government interference by prohibiting cities and counties from adopting price control mandates on the purchase or sale of privately-owned property. Through the comments provided in our testimony, we hope to provide some additional legal and public policy content on this issue.

KAR is the state's largest professional trade association, representing nearly 8,500 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 property owners for over 95 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

Community Activists are Pushing for the Adoption of Price Control Mandates on New Housing Development

Over the past few years, a group of affordable housing advocates and community activists in the City of Lawrence have been pushing the city and county to adopt "inclusionary zoning" requirements on all new single-family and multi-family housing developments. Inclusionary zoning mandates are extremely common in more liberal states such as California and Maryland, but are starting to spread to other states with pressure from affordable housing advocates and community activists. Inclusionary zoning mandates are simply price controls with a fancy name.

Basically, inclusionary zoning requirements impose price control mandates on private property owners by limiting the rental amount or sales price that a property owner can charge to rent or sell a property to a potential tenant or purchaser. Once a property has been placed under the price control mandate, the property owner may only rent or sell the property to certain households designated by the city or county at below market-rate prices.

For example, the developer of a new neighborhood of 50 single-family homes approaches a city and requests that the city approve a plat for the new subdivision. The land is already zoned for single-family residential use and nothing in the developer's plans contradicts the land use for the property that has been designated in the city's comprehensive plan. Under normal circumstances and without the price control mandates, the approval of the subdivision by the city would be nearly automatic.

If the city has adopted price control mandates, before the city would approve the plat for the subdivision, the city would require the developer to agree that 15 of the homes (30 percent) to be constructed in the new neighborhood would be subject to price controls that would mandate that the homes be sold for below market-rate amounts. If the developer does not agree to the price controls, the city would deny the platting of the subdivision and the issuance of building permits.

As an alternative, the city may also give the developer the option of buying their way out of the price controls by making a substantial up-front cash payment to the city or an affordable housing trust fund designated by the city. In effect, the developer is required to pay the city for the right to construct homes in the subdivision, which is already allowed under the land use regulations and zoning adopted by the city. By any other measurement and if this were being done by a private entity, this would be extortion.

“Inclusionary Zoning” Really Means a Backdoor Tax Increase on New Home Buyers and Renters

Common sense and basic economics tell us that price control mandates basically turn into a backdoor tax increase on families who rent or purchase a new apartment or home. By imposing an arbitrary cap on the rental or sales price that can be charged by the property owner, the city or county will in effect be forcing the property owner to rent or sell the property at a substantial discount to the market rate.

Although the families that reside in the price-controlled housing units will receive a subsidy on the rental or purchase of the property, the developer or property owner will be forced to recoup this loss by increasing the rental amount or sales price on all other housing units in the apartment complex or subdivision. Housing development does not occur in a vacuum and a city or county cannot just arbitrarily order a developer or home builder to lower the price of housing units. Developers and home builders have construction loans to pay off on the development, subcontractors to pay for various components of the project and infrastructure improvements to prepare the land for development.

As a result, the developer or home builder will ultimately be forced to pass along the substantial loss on the price-controlled housing units to the families who will be renting or purchasing market-rate units. As a result, this forced redistribution will force families who are renting or purchasing market-rate housing units to pick up the tab for the subsidy provided to the families renting or purchasing the price-controlled housing units.

This is the classic definition of a tax. The additional rental amount or sales price that most families will be required to pay for the market-rate housing unit is a “forced contribution” that will pay for a benefit conferred on another class of taxpayers.

Ironically, price control mandates are enacted with the stated purpose of creating affordable housing. Common sense and basic economics theory show that these programs actually will have the perverse result of increasing the cost of housing for families that buy or rent market-rate housing units, which defeats the intended purpose of the programs.

Studies Demonstrate that Price Control Mandates Lead to Less Affordable Housing

Unfortunately, KAR believes that price control mandates would lead to an increase in the cost of housing for Kansas families and a reduction in the number of market-rate housing units that are constructed by Kansas contractors, developers and home builders. Numerous studies and examples from other communities with inclusionary zoning programs support these conclusions.

Madison, Wisconsin: In February 2004, the City of Madison enacted an inclusionary zoning program that had the stated purpose of furthering the “availability of the full range of housing choices for families of all income levels in all areas of the City of Madison.” The ordinance required a development with ten or more rental dwelling units to provide no less than 15 percent of its total number of dwelling units as price-controlled dwelling units when the development “requires a zoning map amendment, subdivision or land division.”

An “inclusionary dwelling unit” was defined as a “dwelling unit for rent to a family with an annual median income at or below sixty percent of the Area Median Income.” Under the ordinance, the monthly rental price for rental inclusionary dwelling units “shall include rent and utility costs and shall be no more than thirty percent of the monthly income for the applicable Area Median Income.”

Prior to the enactment of the inclusionary zoning requirements from 2001 to 2003, contractors and developers in Madison had constructed 3,257 housing units. Following the enactment of the requirements from 2004 to 2006, developers constructed only 1,954 housing units. As a result, there was a 40 percent reduction in the number of housing units constructed in Madison following the enactment of the inclusionary zoning requirements. In effect, the inclusionary zoning requirements deterred contractors and developers from constructing housing units.

In 2006, the City of Madison issued only 143 permits for market-rate apartment units, which compared to the 660 market-rate apartment unit permits issued in 2003 (a 78 percent reduction). According to one study on the Madison inclusionary zoning requirements, the drastic downturn in new housing construction caused vacancy rates to decline in existing rental units and led to an increase in rental prices, which achieved the exact opposite effect of what the city had intended in enacting the requirements. “How Inclusionary Zoning Backfired on Madison,” Terrence Wall, *Madison Isthmus Weekly*, March 15, 2007.

Following a court’s decision that the ordinance violated the state’s rent control prohibitions (discussed later in this testimony), the City of Madison decided not to renew the inclusionary zoning requirements when they came up for renewal in 2009. The statistics quoted in the study basically prove that the enactment of the inclusionary zoning requirements had the effect of decreasing the supply and affordability of housing.

California Study Conducted by San Jose State University Economists: Another study conducted by economists at San Jose State University found that inclusionary zoning programs in California led to a 20 percent increase in prices for market-rate housing units and a seven percent decrease in the number of market-rate housing units constructed between 1990 and 2000. Although the introduction of inclusionary zoning does lead to an increase in the construction of below market rate housing units, at the same time it leads to a decrease in the number of market-rate housing units constructed and an increase in the cost of market-rate housing units. “*Unintended or Intended Consequences? The Effect of Below-Market Housing Mandates on Housing Markets in California.*” Means and Stringham, *Journal of Public Finance and Public Choice*, Vol. XXX, 1-3/2012.

Boston and San Francisco Study Conducted by New York University Economists: An additional study conducted by economists at New York University (NYU) found that inclusionary zoning requirements in Boston and San Francisco “constrain new development, particularly during periods of regional price appreciation.” Moreover, “there is also strong evidence that implementation of region-wide inclusionary zoning put upward pressure on single-family home prices in the Boston-area suburbs between 1987 and 2008.” “*Silver Bullet or Trojan Horse: The Effects of Inclusionary Zoning on Local Housing Markets in the United States,*” Schuetz, Meitzer and Been, Furman Center, New York University, June 2010.

Kansas Already Prohibit Cities and Counties from Imposing Price Control Mandates on Rental Housing

During the 2001 Legislative Session, KAR was instrumental in helping to pass legislation (**SB 146**), which became K.S.A. 12-16,120 in the statute books. Under K.S.A. 12-16,120, no political subdivision of the state (which includes all cities and counties) “shall enact, maintain or enforce any ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property.” This is generally known as a prohibition on “rent control.”

At the time, numerous cities and counties in Kansas were considering placing explicit limitations on the amount of rent that could be charged by the owners of private property. In order to stop these efforts in their tracks, the Kansas Legislature preemptively passed this legislation to permanently prohibit cities and counties from regulating the amount of rent that could be charged on privately-owned commercial or residential property.

Since no Kansas cities or counties have enacted inclusionary zoning requirements at this time, this statute has never been tested in a Kansas court to determine whether it prohibits a city or county from enacting inclusionary zoning requirements. Having said that, the state of Wisconsin has a rent control statute that is extremely similar to the Kansas rent control statute. Under Wisconsin statute §66.1015, “no city, village, town or county may regulate the amount of rent or fees charged for the use of a residential dwelling unit.”

After the enactment of the inclusionary zoning ordinance by the City of Madison in 2004, the Apartment Association of South Central Wisconsin filed litigation against the City of Madison alleging that the provision limiting the rental price for inclusionary dwelling units sought to regulate the amount of rent charged for rental units and thus violated the provisions of Wisconsin statute §66.1015.

In the *Apartment Association of South Central Wisconsin v. City of Madison*, 722 N.W.2d 614 (Wis.App. 2006), the Wisconsin Court of Appeals sided with the plaintiffs and invalidated the ordinance as an illegal rent control prohibition under the Wisconsin state statute. In doing so, the court held that “the legislature has expressly withdrawn the power of the City to enact the ordinance because this ordinance provision regulates the amount of rent that property owners in the specified circumstances may charge for rental dwelling units.” *Apartment Association of South Central Wisconsin* at 625. Later that year, the Wisconsin Supreme Court declined a petition to review the appellate court’s ruling and the ruling was basically affirmed.

Again, no Kansas courts have examined this statute since no Kansas cities or counties have enacted inclusionary zoning requirements at this time. However, we believe that the court opinion from Wisconsin would be highly persuasive authority on this issue and we are hopeful that a Kansas court would hold that any efforts by a city or county to place rent controls on rental dwelling units through the enactment of inclusionary zoning requirements would be struck down under K.S.A. 12-16,120.

Existing “Rent Control” Statute Does Not Prohibit Price Control Mandates on the Sale of Property

Unfortunately, the state’s existing prohibition on “rent controls” found in K.S.A. 12-16,120 does not prohibit a city or county from adopting or enforcing any ordinances or resolutions that would impose price control mandates on the purchase or sale of privately-owned residential or commercial property. As a result, even though the existing statute would most likely prohibit a city or county from adopting inclusionary zoning requirements on rental property, this same prohibition would not apply to owner-occupied property.

Conclusion

Even though no cities or counties in the state of Kansas have enacted price control mandates at this time, these ideas seem to spread fairly quickly across the state once they are adopted in one community. Earlier this year, one community activist in Lawrence remarked that “hopefully the Legislature will not take away our ability to enact these requirements” when discussing plans to adopt price control mandates.

As a result, we strongly believe that now is the time for the Kansas Legislature to protect consumer choice in the housing market and private property rights by preemptively passing legislation to ban price control mandates on the purchase or sale of private property. **SB 366** would simply prohibit this particularly offensive tool and would leave cities and counties with plenty of flexibility to address the problem of affordable housing through other less offensive means.

Accordingly, KAR would respectfully request that you support **SB 366**, which will amend the state’s existing rent control statute (K.S.A. 12-16,120) to also prohibit a city or county from adopting or enforcing any price control mandates on the purchase or sale of privately-owned commercial or residential property. In doing so, the Kansas Legislature will protect consumer choice in the housing market and private property rights by letting the free market control the cost of housing.

Fundamentally, no city or county should have the right to mandate the amount that your constituents can charge to lease or sell their privately-owned property and to impose a new tax on housing units. Thank you for taking the time to consider our thoughts on this very important issue.