

Approved February 12, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./p.m. on February 7, 1991 in room 531-N of the Capitol.

All members were present except:

Sen. Steineger

Committee staff present:

Theresa Kiernan, Revisor of Statutes
Mike Heim, Legislative Research
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Ernie Mosher, League of Kansas Municipalities
Ramon Powers, Kansas State Historical Society
Cathy Holdeman, City of Wichita

The meeting began with the request for the introduction of a bill by Sen. Petty which simply involves a revisor's change to amend the population number in a bill passed last year so that it can be used by Rossville as the population number for Shawnee County should have been changed.

Sen. Burke made a motion to introduce the bill and request that it be placed on the Consent Calendar, Sen. Daniels seconded, and the motion carried.

SB 57 - Concerning the repair or removal of unsafe or dangerous structures.

Ernie Mosher, League of Kansas Municipalities, testified in support of the bill with one amendment. (Attachment 1).

The Chairman asked Mr. Mosher if the reduction of the notice of hearing from 30 to 5 days in this bill would receive the same objections as expressed in testimony on SB 23 where the days were changed from 20 to 15. Mr. Mosher explained that he would not expect any objections to the change in SB 57 because there would have been several weeks of action before getting to the notification point.

Ramon Powers of the Kansas State Historical Society followed with testimony suggesting an alteration in SB 57 to allow repairs to be made by cities. (Attachment 2). Mike Heim noted that if this amendment is made, language will need to be added to allow cities the ability to recapture the repair costs. Mr. Powers was in agreement with this. A short discussion followed regarding the placement of "repair" in the bill. Also discussed was the preservation of historical sites and the length of time sometimes involved in getting permits to demolish unsightly property.

Final testimony was given by Cathy Holdeman with the City of Wichita in support of the bill. (Attachment 3). Sen. Daniels asked Ms. Holdeman if she agrees with the suggested amendments by other conferees. Ms. Holdeman had no problems with the amendments. With this, the hearing on SB 57 was concluded.

The Chairman asked Mr. Mosher his opinion of the addition of "repaired" to the bill. Mr. Mosher said the use of "repaired or removed" would be consistent with other statutory language.

The Chairman asked the committee for its opinion of the amendment on Line 5 offered by Mr. Mosher which deletes "on the record, of such hearing and findings." Sen. Langworthy made a motion to so amend SB 57, Sen. Frahm seconded, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,
room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on February 7, 1991

With regard to the addition of "repair", Mike Heim noted that if cities are to do repairs, it will be necessary to clarify another section to make this clear.

Sen. Lee raised the question whether an owner of a historical structure could always afford to do the repairs. Mr. Mosher clarified that this is a public safety bill and would not require total renovation of a structure, just the necessary repairs to make it safe to the public.

Mr. Mosher suggested that SB 57 be amended on line 19 by striking "razed and" and inserting "repaired or removed". Sen. Allen made a motion to so amend, Sen. Ehrlich seconded, and the motion carried.

Theresa Kiernan felt that 12-1755 would need to be clarified to make it consistent with this amendment to cover cities' cost of repair. Sen. Allen made a motion to make this technical amendment in 12-1755, Sen. Daniels seconded.

Sen. Lee began a discussion as to the intent of "repair." Mr. Heim said this amendment would clarify the power of cities to repair structures to make them safe whereas before it was up to the property owner. Sen. Lee reiterated her concern that the bill does not indicate that "repair" applies only to safety but simply says, "repair." After a short discussion, the Chairman called for a vote on Sen. Allen's motion, and the motion carried.

Mr. Mosher and staff will work on the bill, and final action will be taken next week.

The minutes of February 6 were approved.

The meeting was adjourned at 9:55 a.m.

Sen. Daniels noted three typographical errors in previous minutes which will be corrected.



**League
of Kansas
Municipalities**

**Municipal
Legislative
Testimony**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Local Government
FROM: E.A. Mosher, Executive Director, League of Kansas Municipalities
RE: SB 57 -- City Dangerous Structures Statute
DATE: February 7, 1991

Position. The League supports the passage of SB 57.

General Explanation. K.S.A. 12-1750 et seq., relating to the repair or removal of unsafe or dangerous structures within cities, now requires the city governing body to hold all hearings as to the condemnation of structures to secure their repair or removal. In some cities, especially larger cities, this requires considerable time at official governing body meetings. The principal changes made by the proposed bill permit the appointment of a structures appeals board to perform the hearing. The city governing body would still be required to make the final order.

Specific Changes.

1. Section 1 amends K.S.A. 12-1751 to authorize the city governing body to appoint a structures appeals board of not less than three electors to conduct the required hearings.

2. In Section 2, K.S.A. 12-1752 is amended to make the following changes:

(a) the preliminary resolution for scheduling the "show cause" hearing is required to be published once each week for two consecutive weeks, at least five days apart, instead of "on the same day of each week".

(b) The minimum number of days between the last publication and date of hearing is reduced from 30 days to 5 days. Under the present law, about 40 days of elapsed time at the minimum is required between the finding by the enforcement officer and the date of hearing and possible order.

The effect of this change is to require a minimum of about 12 days between the first publication and the hearing date. Since the dangerous structures procedure normally follows weeks of informal attempts to get the owner to do something, we don't think this is unreasonable. It does, of course, permit an expeditious city action that could adversely affect an absent or absentee property owner.

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(c) In lieu of the required certified mailing of the resolution, the bill would permit personal service. Personal service appears appropriate when (1) some urgent action is necessary or (2) it is cheaper than certified mail (\$1.10 each, plus \$.90 for return receipt).

3. In Section 3, K.S.A. 12-1753 is amended to:

(a) implement the option of using a structures appeals board. In such instance, as the bill is written, the board would make its findings to the governing body for its review, on the record. Whether by review of the board's findings, or after the conclusion of the hearing by the governing body, it is the governing body which adopts findings (i.e. makes the final decision), by resolution. See **Proposed Amendment**, below.

(b) the present sentence as to the publication of the final order (lines 10:13, page 2) is switched to lines 20:23 so that it follows the provision as to the contents of the order. Further, the final order (resolution) could be mailed or personally served on the affected parties.

Proposed Amendment.

After reviewing the bill and consulting with some local officials, we suggest the amendment below, which strikes out, on page 2, line 6 the words: "on the record, of such hearing and findings". It was not our intent to prohibit a governing body which has established an appeals board from holding additional formal or informal hearings or taking additional testimony. Use of the words "on the record" would leave an apparent legislative intent that the governing body could only consider the final order based on the findings of the appeals board.

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1 statement and shall make its findings ~~by resolution in writing~~. If
2 such hearing is conducted by the structures appeals board, the
3 board, at the conclusion of the hearing, shall make findings and
4 transmit its written findings to the governing body for its review,
5 ~~on the record, of such hearing and findings~~. After such review or
6 after the conclusion of a hearing conducted by the governing body,
7 the governing body shall adopt findings by resolution. If the gov-
8 erning body of the city shall find finds that such structure is unsafe
9 or dangerous, such resolution shall direct the structure to be repaired
10 or removed and the premises made safe and secure. ~~Such resolution~~
11 ~~shall be published once in the official city paper and a copy~~
12 ~~mailed to the owners, agents, lienholders of record and oc-~~
13 ~~cupants in the same manner provided for the notice of hearing.~~
14 The resolution shall fix a reasonable time within which the repair
15 or removal of such structure shall be commenced and a statement
16 that if the owner of such structure fails to commence the repair or
17 removal of such structure within the time stated or fails to diligently
18 prosecute the same until the work is completed, the governing body
19 ~~will~~ may cause the structure to be razed and removed. ~~Such res-~~
20 ~~olution shall be published once in the official city newspaper and a~~
21 ~~copy shall be mailed or served on the owners, agents, lienholders~~
22 ~~of record and occupants in the same manner provided for the giving~~
23 ~~of notice of the hearing in K.S.A. 12-1752, and amendments thereto.~~
24 Sec. 4. K.S.A. 12-1751, 12-1752 and 12-1753 are hereby
25 repealed.
26 Sec. 5. This act shall take effect and be in force from and after
27 its publication in the statute book.

STATEMENT OF RAMON POWERS, EXECUTIVE DIRECTOR, KANSAS STATE HISTORICAL SOCIETY, BEFORE THE SENATE COMMITTEE ON LOCAL GOVERNMENT IN RE SB 57, FEBRUARY 7, 1991

The state preservation statute K.S.A. 75-2724, enacted in 1977 (amended in 1981 and 1988) declared historic preservation to be public policy and that it was in the public interest of the state to engage in a comprehensive program of historic preservation and to foster and promote the conservation and use of historic property. As State Historic Preservation Officer, I believe it is important for me to provide testimony on Senate Bill No. 57. While this bill does not deal directly with historic preservation issues, it does regulate local municipalities' legal rights when dealing with the built environment. An issue that many local units of government are currently dealing with is the issue of "Demolition by Neglect." The primary mechanism used by many localities to combat that problem is the adoption of code provisions requiring land-owners to maintain their properties. The content of these provisions, referred to as "minimum maintenance," "anti-neglect," or "affirmative maintenance," provisions, and the procedures for enforcing their requirements vary widely.

The most effective enforcement mechanism is one which, in addition to the imposition of fines, allows a locality itself to make the necessary repairs if the landowner does not make them within a specified period of time and attach a lien on the property in the amount of the repairs. This type of mechanism has enough teeth to either prompt compliance or prevent demolition by neglect in the event of noncompliance. The police power is an inherent power of

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government to regulate, to protect or promote the public health, safety, or the general welfare.

The state's historic preservation statute discourages the use of the "Urban Renewal" development concept. Urban renewal development typically involves the wholesale demolition of buildings, including removing all site improvements with the hopes of attracting new development. History has shown that this development philosophy does not work as it was intended, and, in fact, it contributes to the erosion of the existing context surrounding historic properties which are located in older central areas of cities which usually have difficulty in attracting appropriate new development.

In a time when Topeka is experiencing a shortage of between 700 to 1,300 affordable housing units, at the same time there are 7,000 substandard housing units, of which 428 are vacant. It seems logical that cities should have the opportunity to repair neglected properties rather than opting for demolition and increasing the shortage of livable housing units.

We believe that Senate Bill No. 57 can be easily altered so that the continued deterioration and possible demolition by neglect of properties may be reduced by simply adding one word to line 19, page 2. The word "repaired" should be added to this sentence in order to provide legal grounds so that the local municipalities have the option to undertake repairs.



OFFICE OF THE CITY MANAGER
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CITY OF WICHITA
SENATE BILL 57 - DANGEROUS AND UNSAFE STRUCTURES
FEBRUARY 7, 1991

SENATOR MONTGOMERY AND MEMBERS OF THE SENATE LOCAL GOVERNMENT COMMITTEE, MY NAME IS CATHY HOLDEMAN, AND I AM INTERGOVERNMENTAL RELATIONS DIRECTOR FOR THE CITY OF WICHITA. ON BEHALF OF THE CITY OF WICHITA, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU IN SUPPORT OF SENATE BILL 57.

THIS PAST YEAR, THE CITY OF WICHITA REVIEWED OUR OWN PROCEDURES ASSOCIATED WITH DANGEROUS AND UNSAFE STRUCTURES, AND FOUND A NUMBER OF AREAS WHERE THE CONDEMNATION PROCESS COULD BE IMPROVED. CITY STAFF ESTIMATES THAT THE AVERAGE PROCESSING TIME FOR A CONDEMNATION CASE TAKES 49 DAYS. THIS IS FROM THE POINT AT WHICH THE COUNCIL ADOPTS A RESOLUTION SETTING THE HEARING DATE, TO THE DATE OF PUBLIC HEARING. WITH THE CHANGES SUGGESTED IN SENATE BILL 57, THIS TIME PERIOD COULD BE SHORTENED TO 28 DAYS. MY FOLLOWING COMMENTS ADDRESS STATUTORIAL CHANGES TO EXPEDITE THE PROCESS.

THE FIRST CHANGE ALLOWS THE GOVERNING BODY TO APPOINT A STRUCTURES APPEALS BOARD OF NOT LESS THAN THREE INDIVIDUALS TO REVIEW CONDEMNATION CASES. CURRENTLY, OUR CITY COUNCIL SERVES AS THIS APPEALS BOARD AND CONDUCTS THE PUBLIC HEARING TO REVIEW SUCH CASES.

IT SHOULD BE NOTED THAT BEFORE THE WICHITA CITY COUNCIL REVIEWS A CONDEMNATION CASE, THE BOARD OF CODE STANDARDS AND APPEALS HOLDS A HEARING AND MAKES A RECOMMENDATION TO THE COUNCIL. THIS IS A NINE-MEMBER BOARD, COMPRISED OF EXPERTS IN THE CONSTRUCTION INDUSTRY AND CITIZENS AT-LARGE. THUS, IN ESSENCE, A CONDEMNATION CASE IN THE CITY OF WICHITA ACTUALLY RECEIVES TWO PUBLIC HEARINGS, ONE WITH THE BOARD OF CODE STANDARDS, AND A SECOND PUBLIC HEARING, AS REQUIRED BY STATE STATUTE, WHICH TAKES PLACE AT A CITY COUNCIL MEETING.

WITH THE STATUTORIAL CHANGE TO ALLOW A STRUCTURALS APPEALS BOARD, THE CITY OF WICHITA'S EXISTING BOARD OF CODE STANDARDS AND APPEALS COULD BE THE ENTITY RESPONSIBLE FOR CONDUCTING THE PUBLIC HEARING. THE CITY IS ALSO CONSIDERING ESTABLISHING AT LEAST A THREE-MEMBER BOARD, POSSIBLY COMPRISED OF COUNCIL MEMBERS, TO CONDUCT THE FORMAL PUBLIC HEARING. IF THIS PROCEDURE IS ADOPTED, THE NINE-MEMBER BOARD OF CODE STANDARDS WOULD CONTINUE IN THEIR ADVISORY CAPACITY, AND THE CITY WOULD FOLLOW THE TWO PUBLIC HEARING PROCEDURE. IN EITHER CASE, THE COUNCIL WILL TAKE FINAL ACTION ON THE CONDEMNATION OF THE STRUCTURE BY PASSAGE OF A RESOLUTION. THE MAIN CHANGE WILL BE THAT THE CITY COUNCIL IN ITS

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ENTIRETY IS NOT RESPONSIBLE FOR CONDUCTING THE PUBLIC HEARING. INSTEAD, THEY RECEIVE THE RECOMMENDATION BY THE REVIEW BOARD, AND THIS ITEM OF BUSINESS IS PLACED ON THE CONSENT AGENDA FOR FINAL ACTION.

THE SECOND STATUTORY CHANGE CENTERS AROUND THE PUBLICATION DATES OF THE RESOLUTION FOR THE PUBLIC HEARING. SENATE BILL 57 PROPOSES TO ALLOW THE RESOLUTION TO BE PUBLISHED ONCE EACH WEEK FOR TWO CONSECUTIVE WEEKS, AT LEAST FIVE DAYS APART, INSTEAD OF "ON THE SAME DAY OF EACH WEEK." THIS CHANGE IS SUGGESTED TO ALLOW THE CITY TO EXPEDITE THE PROCESS. FOR EXAMPLE, IF THE CITY PUBLISHED THE RESOLUTION ON WEDNESDAY OF THE FIRST WEEK, THE NEXT PUBLICATION DATE COULD BE MONDAY OF THE FOLLOWING WEEK. UNDER THE CURRENT STATUTE, THE CITY WOULD HAVE TO WAIT UNTIL THE NEXT WEDNESDAY FOR THE SECOND PUBLICATION.

A THIRD CHANGE RELATES TO THE MINIMUM NUMBER OF DAYS BETWEEN THE LAST PUBLICATION OF THE RESOLUTION FOR THE PUBLIC HEARING, AND THE DATE THAT IS SET FOR THE HEARING. THE CURRENT STATUTE SPECIFIES THAT 30 DAYS SHALL ELAPSE BETWEEN THE LAST PUBLICATION DATE, AND THE HEARING DATE. SENATE BILL 57 PROPOSES THAT THIS PERIOD BE SHORTENED TO 5 DAYS.

A QUESTION MAY ARISE AS TO WHETHER THE OWNER OF THE PROPERTY HAS HAD AMPLE TIME TO IMPROVE OR DEMOLISH THE PROPERTY. IT SHOULD BE NOTED THAT PRIOR TO THE PUBLIC HEARING, THE CITY OF WICHITA'S CENTRAL INSPECTION DIVISION HAS WORKED WITH THE OWNER OF THE PROPERTY ON THE AVERAGE OF AT LEAST FOUR TO SIX MONTHS. I WILL BRIEFLY EXPLAIN THE PROCEDURE THAT HAS TAKEN PLACE UP UNTIL THIS POINT.

- 1) A COMPLAINT HAS BEEN FILED BY A CITIZEN OR OCCUPANT, OR A CODE VIOLATION HAS BEEN OBSERVED BY THE CITY'S CENTRAL INSPECTION DIVISION.
- 2) THE OWNER HAS RECEIVED A "NOTICE OF IMPROVEMENTS" WHICH OUTLINES THE DETERIORATED NATURE OF THE STRUCTURE. THE NOTICE STATES THAT IT IS A VIOLATION OF CITY CODE, AND CORRECTION IS NEEDED. THE OWNER IS GIVEN A MINIMUM OF 30 DAYS TO CORRECT THE PROBLEM.
- 3) IF THE OWNER DOES NOT CORRECT THE DEFICIENCIES WITHIN THIS TIME FRAME, THEY ARE GIVEN A SECOND NOTICE, WHICH USUALLY ALLOWS AN ADDITIONAL 15 OR 30 DAYS FOR ACTION.
- 4) IF THE OWNER STILL FAILS TO RESPOND, THEY ARE SENT BY CERTIFIED MAIL, A NOTICE OF CONDEMNATION LETTER WHICH GIVES THEM ANOTHER 30 DAYS TO COMPLY.
- 5) IF NO COMPLIANCE IS ACHIEVED AT THIS POINT, A CERTIFICATE OF TITLE IS ORDERED. ONCE THE CERTIFICATE OF TITLE IS RECEIVED, THE LAW DEPARTMENT REVIEWS AND DETERMINES WHO NEEDS TO BE NOTIFIED. THE OWNER OF THE PROPERTY, ALONG WITH ANY LIEN HOLDER, IS NOTIFIED THAT THERE WILL BE A PUBLIC HEARING ON THE STRUCTURE. ORDERING THE TITLE, AND LAW DEPARTMENT REVIEW TAKES AT LEAST ANOTHER 30 DAYS BEFORE THE HEARING DATE CAN BE ESTABLISHED.

THUS, IN LIGHT OF THE CITY OF WICHITA'S CONDEMNATION PROCEDURES, IT IS OUR BELIEF THAT AMPLE TIME HAS ALREADY BEEN GRANTED TO REPAIR OR REMOVE THESE STRUCTURES, AND REDUCING THE PERIOD OF TIME BETWEEN THE LAST PUBLICATION DATE, AND THE DATE OF THE HEARING FROM 30 DAYS TO 5 DAYS IS REASONABLE.

A FINAL SUGGESTED CHANGE RELATES TO THE ABILITY TO PERSONALLY SERVE NOTIFICATION OF THE RESOLUTION FOR PUBLIC HEARING, AS WELL AS THE RESOLUTION FOR ACTION TO THE OWNERS, AGENTS, OR LIEN HOLDERS. IT MAY BE MORE CONVENIENT AND/OR CHEAPER TO PERSONALLY SERVE THE NOTICE, AND THUS IT WOULD BE HELPFUL TO HAVE THIS ALTERNATIVE.

IN WICHITA, ALL OF THE CONDEMNATION CASES PROCESSED BY THE CENTRAL INSPECTION DIVISION CONCERN VACANT PROPERTIES. CONDEMNATION PROCEDURES ARE NOT INITIATED WHEN THE STRUCTURE IS OCCUPIED. CITY STAFF ESTIMATE THAT IN AT LEAST 50% OF THE CASES, NEITHER THE OWNER, OR THE LIEN HOLDER RESPOND TO THE NOTICE TO REPAIR OR THE NOTICE FOR PUBLIC HEARING. THUS, AS A RESULT OF WAITING UNTIL A PROPERTY IS VACATED AND GIVEN STATUTORIAL AND CITY OF WICHITA DUE PROCESS NOTIFICATION PROCEDURES, RESIDENTS IN THE NEIGHBORHOOD MAY HAVE LIVED WITH THE PROBLEM FOR MONTHS BEFORE THE PUBLIC HEARING PROCEDURE CAN BE INITIATED. DETERIORATED VACANT PROPERTIES ARE A PUBLIC NUISANCE. THEY CAN BE INVITING, HAZARDOUS PLAY AREAS FOR SMALL CHILDREN; THEY CAN HOUSE STREET GANGS AND DRUG USERS, AS WELL AS BEING AN EYESORE TO THE NEIGHBORHOOD.

IN SUM, THE CITY OF WICHITA IS SUPPORTIVE OF THE CHANGES REFLECTED IN SENATE BILL 57 AND FEEL THAT THEY ARE NECESSARY TO EXPEDITE THE PROCESS ONCE THE PUBLIC HEARING DATE HAS BEEN SET. APPROVAL OF THIS BILL WILL ENABLE THE CITY TO MORE READILY UPGRADE OR REMOVE DANGEROUS OR UNSAFE STRUCTURES.