

To: Senate Committee on Federal and State Affairs
From: Nathan Eberline, Executive Director
Date: February 12, 2024
RE: SB 474 – Expanding Voter Initiated Ordinances
In Opposition – Verbal Testimony

Introduction

One of the virtues of city governance is the accessibility of elected officials. It is the closest representative body to the voters, and this access by the citizenry is part of the reason that local government earns the highest trust level among Americans.¹ Even in large cities, it is possible to secure time with elected officials and speak directly to the governing body as part of the city's official business. It is this trait of transparency and accessibility that is one of the most distinctive traits of city governance. It is also a reason to be particularly cautious about the proposal in SB 474, which would expand the scope of voter-initiated ordinances. There are many sound reasons why the United States formed as a republic, and SB 474 undermines the principles at the bedrock of our nation. The League of Kansas Municipalities opposes SB 474 on behalf of its cities, and we encourage this committee to do the same.

Explanation of Administrative Ordinances

The Kansas Constitution grants cities broad powers covering a wide range of subjects that includes the traditional municipal responsibilities. But the subject of administrative ordinances covered in SB 474 may be less familiar. *McAlister v. City of Fairway* provides a number of examples that may be helpful for these deliberations.² Examples include:

- Where municipal facilities should be located;
- The operation, management, financing of a city-wide storm water management system;
- City zoning authority; and
- Eminent domain authority.³

¹ Pew Research Center. "Americans' Views of Government: Key Findings." June 6, 2022. Available at: www.pewresearch.org/politics/2022/06/06/levels-of-government-federal-state-local/; 66% say they have a favorable view of their local government, compared with 54% for state government and 32% for the federal government.

² *McAlister v. City of Fairway*, 289 Kan. 391 (2009).

³ *Id.*

As a general guide, the Kansas Supreme Court has framed the issue this way: “An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative.”⁴ These may seem like lesser matters compared to the broader scope of city governance, yet consider this further explanation by the court: “Decisions which require specialized training and experience 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.”⁵ This specialization is the reason to limit voter-initiated petitions for administrative ordinances.

Policy Arguments Against SB 474

On one hand, SB 474 offers some admirable policy objectives. SB 474 could encourage citizen engagement in local governance, and it expands more direct influence by the citizenry. Yet these potential benefits fail to overcome the significant issues underpinning the bill, including:

- Increased administrative burden and costs for cities to process petitions and hold special elections.
- Potential passage of ordinances that are not well-considered or informed by expert advice.
- Use of the process by special interest groups to push through ordinances that benefit a narrow segment of the population.
- Undermining the authority entrusted to elected officials and the ability of city governments to effectively govern.

These concerns should give this committee great pause when considering SB 474. We have seen numerous examples of voter-initiated measures that are ill-informed and poorly constructed. We place great responsibility in our elected officials, and this legislation undermines that trust.

Conclusion

While the intentions of this bill may be worthwhile, the potential consequences are concerning. The combined risk of added costs, increased litigation, and poorly drafted or contradictory ordinances adds significant problems with nominal benefit in an arena that already allows maximum transparency and public access. It is crucial to maintain the balance between citizen engagement and responsible governance, which is better achieved through existing systems and safeguards. We encourage you to vote against SB 474 and are happy to provide any additional information that might be helpful.

⁴ *McAlister v. City of Fairway*, 289 Kan. 391 (citing *City of Lawrence v. McArdle*, 214 Kan. 862 (2009)).

⁵ *Id.*