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**House Committee on Commerce, Labor and Economic Development
Testimony in Opposition to HB 2665 by the City of Overland Park
March 1, 2016**

Honorable Chairman Hutton and Members of the Committee:

The City of Overland Park opposes HB 2665 limiting city and county inspection of rental properties. The bill is vague and overly broad, and as drafted, will create disputes and legal issues beyond the intended scope of the legislation. Further, the bill unnecessarily restricts local government's ability to do basic property code enforcement, i.e. exterior inspections of private property. Finally, the bill is an intrusion into local government's ability and responsibility to govern and to provide programs that local elected officials have determined to be in the best interest of their local communities.

First and foremost, the bill is unnecessary due to existing constitutional and statutory standards that govern local governmental activities related to inspection of rental properties. The Constitutional issues regarding searches under the Fourth Amendment are well litigated and firmly established in existing caselaw; and the courts have set clear boundaries on when administrative search warrants are required in order to protect individuals from illegal and unconstitutional searches. Because the bill's language is so vague and overly broad, enacting such a legislative regulation will certainly create confusion as to whether or not the new statute is establishing additional statutory restrictions and requirements exceeding the well established and existing Fourth Amendment standards. Such statutory confusion may result in unanticipated and unnecessary litigation.

We presume that the underlying intent of the bill is to address residential rental licensing programs. However, the proposed language is not so limited; and it can be read to include commercial rental properties as well. If commercial rentals are included, the vague and overly broad language might be interpreted to prohibit local governments from conducting other types of inspections, such as restaurant food safety inspections and other long standing public safety inspections of facilities open to the public or invitees. (For example, inspections of pools and spas at a hotel or apartment complex, massage parlors, pawn shops, etc.) Accordingly, the bill will create unintended results that again may result in unanticipated and unnecessary litigation.

Under current law, typical exterior inspections (for rental or owner-occupied structures) do not require search warrants and do not infringe upon anyone's Constitutional rights. Overland Park's ordinance provides only for exterior inspections from the right-of-way and other legally accessible areas that do not meet the definition of a search under the Fourth Amendment. In the

event that inspection or other evidence indicates that a closer or more thorough inspection is necessary (for example an inspection of the interior or the curtilage of the residence) the Overland Park ordinance requires the City to either obtain permission to enter the property or to seek an administrative search warrant from the District Court. The City's ordinance was drafted and is applied so as to adhere to and preserve the protections and requirements of the Fourth Amendment.

One of the keystones of Overland Park's rental licensing ordinance is to create a registration program that allows the City to quickly and easily contact rental property owners and managers concerning property maintenance issues. However, there are and will continue to be situations where an owner fails to provide current contact information. This issue is especially prevalent among out of town - and sometimes out of country - property owners. As written, the requirement in HB 2665 that no inspection take place until the owner is notified, creates confusion whether the City can inspect the exterior of properties from the right-of-way or other areas not infringing upon anyone's Constitutional rights. Further, this requirement will also unnecessarily diminish the authority of a court issuing an administrative search warrant. (Presumably an unintended consequence.) While notice is always preferred, there are times when the owner is unavailable - sometimes intentionally - and action is necessary in order to protect public safety. Courts should be allowed to address these issues on a case by case basis.

Finally, the provision of HB 2665 that prohibit tenants from seeking an inspection when subject to an eviction proceeding is, in the City's opinion, poor public policy. Under Kansas law, tenants have a fundamental right to the use of the property until and unless they receive due process and their day in court and, after reviewing the specific facts, a court orders eviction. The bill erodes tenants' rights to address issues related to the rental structure; and it inhibits and prevents tenants from seeking help against negligent and bad landlords that fail to provide a safe and healthy house. The bill also again unnecessarily infringes upon the authority of a court that might otherwise order a city inspection as part of the eviction process. Courts should have the discretion to weigh the facts of each particular case and not be limited as provided in HB 2665.

For the reasons expressed above, the City of Overland Park opposes HB 2665. Given the vague and overly broad language of the bill, it is almost certain that negative unintended consequences will emerge if the bill is approved in its current form. Application and enforcement of the current law should be sufficient to provide the necessary safeguards and Constitutional protections of property owners and tenants.

Thank you for the opportunity to comment on this legislation.