

To: House Commerce

From: John Goodyear, General Counsel

Date: February 6, 2023

RE: Testimony in Opposition to HB 2173

I want to thank Chairman Tarwater and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide testimony in opposition to HB 2173.

The League's top priority every legislative session is the protection and preservation of home rule. We regularly come before legislative committees to voice our support of the Home Rule amendment (attached as the 2nd and 3rd page with this testimony) and oppose bills that would seek to limit the Constitutional authority to govern their own affairs. Because HB 2173 is drafted in a way that will hinder the exercise of local control, the League and our member cities oppose it.

Cities are charged with protecting and preserving the health, safety, and welfare of the public. To do so, they adopt building codes and standards for their communities. Considering a building code is not a simple undertaking. Communities regularly take years to adopt the standards for their community – studying the code itself and various alternatives and determining what provisions should be added, supplemented, or removed. In doing this, cities routinely engage with builders in the communities. This process allows cities to determine what their community wants and needs.

This is an issue that should be addressed at the local level – not broad preemption legislation. If there are cities where a specific refrigerant is banned pursuant to the adopted code, stakeholders can and should work with the community to determine why that refrigerant is banned. Has it been banned due to a specific concern by members of the community? Or is it an older provision that does not yet reflect newer standards? Stakeholders can find out by engaging and working with the city to understand the limitation and determine if there is opportunity for compromise.

Because of the limits that HB 2173 would impose on cities' home rule powers to establish and enforce standards for their community, the League opposes this bill and would ask that the Committee not recommend it favorably for passage.

Constitution of the State of Kansas

Article 12. - CORPORATIONS

§ 5. Cities' powers of home rule. (a) The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved: Provided, That existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance.

(b) Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness. All enactments relating to cities now in effect or hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as herein provided for in subsection (c).

(c) (1) Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.

(2) A charter ordinance is an ordinance which exempts a city from the whole or any part of any enactment of the legislature as referred to in this section and which may provide substitute and additional provisions on the same subject. Such charter ordinance shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city. Every charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper or, if there is none, in a newspaper of general circulation in the city.

(3) No charter ordinance shall take effect until sixty days after its final publication. If within sixty days of its final publication a petition signed by a number of electors of the city equal to not less than ten percent of the number of electors who voted at the last preceding regular city election shall be filed in the office of the clerk of such city demanding that such ordinance be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon. An election, if called, shall be called within thirty days and held within ninety days after the filing of the petition. The governing body shall pass an ordinance calling the election and fixing the date, which ordinance shall be published once each week for three consecutive weeks in the official city newspaper or,

if there be none, in a newspaper of general circulation in the city, and the election shall be conducted as elections for officers and by the officers handling such elections. The proposition shall be: "Shall charter ordinance No. _____, entitled (title of ordinance) take effect?" The governing body may submit any charter ordinance to a referendum without petition by the same publication of the charter ordinance and the same publication of the ordinance calling the election as for ordinances upon petition and 34 such charter ordinance shall then become effective when approved by a majority of the electors voting thereon. Each charter ordinance becoming effective shall be recorded by the clerk in a book maintained for that purpose with a statement of the manner of adoption and a certified copy shall be filed with the secretary of state, who shall keep an index of the same.

(4) Each charter ordinance enacted shall control and prevail over any prior or subsequent act of the governing body of the city and may be repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities.

(d) Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.

(e) This amendment shall be effective on and after July 1, 1961.