

**COPY**

FILED  
APP DOCKET NO. \_\_\_\_\_

2020 JUL 29 P 12:48

CLERK OF DIST COURT  
18<sup>TH</sup> JUDICIAL DISTRICT  
SEDGWICK COUNTY, KS

BY \_\_\_\_\_

SHARON L. DICKGRAFE  
Chief Deputy City Attorney  
City Hall - 13th Floor  
455 N. Main  
Wichita, Kansas 67202  
(316) 268-4681

IN THE EIGHTEENTH JUDICIAL DISTRICT COURT  
SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT

CITY OF WICHITA, KANSAS )  
a Municipal Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KARL PETERJOHN AND )  
CELESTE RACETTE )  
INDIVIDUALLY AND )  
AS REPRESENTATIVES )  
OF "SAVE CENTURY 2 COMMITTEE," )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 20CV1217

**MEMORANDUM IN SUPPORT OF CITY OF WICHITA'S  
PETITION FOR DECLARATORY JUDGMENT**

COMES NOW, the City of Wichita, Kansas, by and through its attorney, Sharon L. Dickgrafe, Chief Deputy City Attorney, and submits the following Memorandum in Support of its Petition for Declaratory Judgment.

**NATURE OF THE CASE**

On July 10, 2020, the Wichita City Clerk received an initiative petition from the "Save Century 2 Committee" (Exhibit A). The Petition had been reviewed by the Sedgwick County

Counselor's office on January 10, 2020 pursuant to K.S.A. 25-3601 for approval of the form of the question (Exhibit B). Following receipt of the petition, it was submitted by the City Clerk to the Sedgwick County Election Commissioner on July 17, 2020. (Affidavit of Karen Sublett, Exhibit C.) The City has filed a Petition for Declaratory Judgment pursuant to K.S.A. 25-3601(b) and K.S.A. 60-1701 seeking a determination that the petition was invalid for failure to comply with the legal requirements of K.S.A. 12-3013 and K.S.A. 25-3601. Additionally, the City asserted that the proposed ordinance was an administrative ordinance which could not be adopted pursuant to K.S.A. 12-3013, it was void as it exceeded the City's legal authority to call for a binding election and that the ordinance, as proposed, was unconstitutionally vague and overbroad.

### **ARGUMENTS AND AUTHORITIES**

#### **I. The Court Has Jurisdiction Over The City's Petition For Declaratory Judgment.**

Kansas Statutes set forth the process to be followed for an ordinance question to appear on an election ballot. *See* K.S.A. 25-3601 *et seq.* Individuals seeking to place an initiative question on a ballot are to submit the question for review by the county or district attorney. K.S.A. 25-3601(a). The county attorney must review the petition and issue an advisory opinion as to the legality of the form of the question within five (5) days. The opinion by the county attorney creates a rebuttable presumption that the form of the question complies with the requirements of the election act. K.S.A. 25-3601(a).

The City has the burden of proving that the form of the question is invalid. K.S.A. 25-3601(b). The court must render an opinion regarding the validity of the form of the petition within 20 days of filing the petition. K.S.A. 25-3601(f). The action before the Court is a summary proceeding with statutorily imposed time constraints. *See Prairie Village v. Morrison,*

264 P.3d 1058, 2011 Lexis 1012 (2011) (unpublished opinion). Based on these statutes, the court has jurisdiction over this matter.

## **II. The Petition Is Invalid For Failing To Comply With K.S.A. 12-3013.**

The initiative and referendum statute, K.S.A. 12-3013, provides a procedure whereby a city's electors may place a legislative action of the city's governing body before a vote of the people, *Rauh v. City of Hutchinson*, 223 Kan. 514, 519, 575 P.2d 517 (1978). In determining the legality of the form of the question on a petition, the Court must examine the requirements of K.S.A. 12-3013 as well as K.S.A. 25-3601 *et seq.* In examining these statutes, the Court is guided by several principles of statutory construction.

The most fundamental rule of statutory construction is that legislative intent governs if that intent can be ascertained. *Nationwide Mutual Ins. Co. v. Briggs*, 298 Kan. 873, 875, 317 P.3d 770 (2014) (quoting *Friends of Bethany Place, Inc. v. City of Topeka*, 297 Kan. 1112, 1123, 307 P.3d 1255 (2013)). The court must first attempt to ascertain legislative intent through the statutory language enacted "giving common words their ordinary meanings." *Cady v. Schroll*, 298 Kan. 731, 738, 317 P.3d 90 (2014). When a statute is plain and unambiguous, the court should not speculate about the legislative intent behind the clear language. The court should not read something into the statute that is not readily found in its words. *Cady* at 298 Kan. at 738-39. To determine legislative intent, various provisions within an Act must be construed in *pari materia* with a view to reconciling and bringing the provisions into workable harmony if possible. *Friends of Bethany Place, Inc. v. City of Topeka*, 297 Kan. 1112, 1123, 307 P.3d 1255 (2013). Lastly, while not binding on the Court, Attorney General Opinions interpreting statutes are deemed persuasive to assist courts in properly construing statutory

provisions. *See Data Tree v. Meek*, 279 Kan. 445, 455, 109 P.3d 1226 (2005) and *McCraw v. City of Merriam*, 271 Kan. 912, 916, 26 P.3d 689 (2001).

In applying these principles, it is clear that in order to have a valid petition that both K.S.A. 12-3013 and K.S.A. 25-3601 must be strictly complied with. This requirement is set forth in K.S.A. 25-3601(d) which provides: “When any other statute imposes specific requirements which are different from the requirements imposed by K.S.A. 25-3601 *et seq.*, the provisions of the specific statute shall control.” The Kansas Attorney General has also concluded that a valid petition must comply with both statutes. *See*: 99 Kan. Op. Att’y Gen. Op. 59 (1999), 92 Op. Att’y Gen. 136 (1992), 94 Op. Att’y Gen. 115 (1994) and 94 Op. Att’y Gen. 95 (1994).

In construing petitions calling for elections, Kansas Courts have required strict compliance with the statutory provisions. “It has long been held in this state that when the holding of an election depends upon the presentation of a petition to invoke the election machinery, it is necessary that the petition conform to statutory requirements.” *Greeley County v. Davis*, 99 Kan. 1, 160 P. 581 (1916); *see also*: *Schmidt v. City of Wichita*, 303 Kan. 650, 367 P.3d 282 (2016) (K.S.A. 12-3013 plainly states what is expected of electors who wish to submit an ordinance to the city’s governing body to eventually become law.) *See also*: 92 Op. Att’y Gen. 136, (1992) 90 Op. Att’y Gen. 64 (1990) and 90 Op. Att’y Gen. 71 (1990). (Provisions of K.S.A. 25-3601 *et seq.* are mandatory and are not mere formalities that can be disregarded at will.) Any substantial departure from the statutory form will render a petition invalid. 90 Op. Att’y Gen. 71. (1990).

While the Office of the Sedgwick County Counselor approved the proposed petition, this finding is merely a rebuttable presumption. *See* K.S.A. 25-3601(a). The petition arguably

complies with most of requirements set forth in K.S.A. 25-3601 *et seq.*, but it fails to comply with a substantial number of statutory requirements contained in K.S.A. 12-3013.

In evaluating the petition, it is clear that it fails to comply with the provisions of K.S.A. 12-3013. In this regard, the petition fails to:

1. Request that the governing body pass the ordinance or submit it to a vote of the electors. K.S.A. 12-3013(a) requires that the petition “shall contain a request that the governing body pass the ordinance or submit the same to a vote of the electors.” This express language or even any similar language is not contained on the petition submitted to the City Clerk. The petition must clearly state the question which petitioners seek to bring to an election. A statement requesting the governing body to take certain action will not meet this obligation. 91 Op. Att’y Gen. 9 (1991), 90 Op. Att’y Gen. Op. 71 (1990), 90 Op. Att’y Gen 4 (1990) and 94 Op. Att’y Gen.119 (1994).
2. Contain language asking that the ordinance be adopted. The statute requires that ordinances be preceded by the words “Shall the following be adopted?” K.S.A. 12-3013(b) and 94 Op. Att’y Gen. 95 (1994). This mandatory language is missing from the petition.
3. Contains more than one topic contrary to K.S.A. 25-3602(a) in that it seeks to require separate elections for multiple years regarding any one of the 500 buildings owned by the City of Wichita.
4. Fails to specify the number and title of the proposed ordinance contrary to K.S.A. 25-3602(a).
5. Lastly, as discussed below, the ordinance is an administrative ordinance not subject to an initiative petition pursuant to K.S.A. 12-3013(e)(1).

These deficiencies cause the petition to be invalid. The purpose of the petition is to inform voters, as well as the City Council, as to what ordinance the electors seek to have passed by the City Council or have placed on the ballot for approval by voters. This petition does neither. It does not request any action be taken by the City Council. As discussed by the Supreme Court in *Schmidt v. City of Wichita*, this petition would not inform voters that by signing it they were requesting any action by the City Council or that an election could be called regarding the proposed ordinance. Such defects are fatal and the petition is invalid. The City's Petition for a Declaratory Judgement should be granted.

**III. The Ordinance Is An Administrative Ordinance Which Cannot Be The Subject Of An Initiative Petition.**

K.S.A. 12-3013(e)(1) provides that the initiative process does not apply to the adoption of administrative ordinances. The Court of Appeals most recently reiterated the criteria to be reviewed in determining if an ordinance is administrative in nature and, therefore, prohibited from being initiated under the referendum statute in *City of Topeka v. Imming*, 51 Kan. App. 2d 247, 344 P.3d 957 (2015).

In making this determination, the court must look at the unique facts of each case. The court in *Imming* relied on the factors set forth in *McAlister v. City of Fairway*, 289 Kan. 391, 399, 212 P.3d 184 (2009) in determining if an ordinance was administrative in nature. Kansas Courts have confined the operation of the initiative and referendum statute with a considerable degree of strictness to measures which are clearly legislative and not principally executive or administrative. *City of Lawrence v. McArdle*, 214 Kan. 862, 867, 522 P.2d 420 (1974). These guidelines are:

1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.

2. Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.
3. 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, even though they may also be said to involve the establishment of policy.
4. If the subject is one of statewide concern in which the legislature has delegated decision-making power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an "administrative" characterization.

289 Kan. at 403-04.

Regarding the first criteria, the City would agree that the proposed ordinance does create a new law requiring the City to call for a special election whenever it sought to demolish, renovate or remove a public building of "historical or architectural significance."

Regarding the second criteria, the proposed ordinance does not declare any public purpose, nor does it provide any means to accomplish any such stated purpose or goal. Additionally, ordinances that deal with a small segment of an overall policy question are generally administrative. *City of Wichita v. Kansas Taxpayers Network, Inc.* 255 Kan. 534, 539 (1994), 874 P.2d 667, 95 Op. Att'y Gen. 50 (1995). The proposed ordinance seeks to only regulate the disposition of public buildings that are historically or architecturally significant. While these terms are not defined by the ordinance, the ordinance only seeks to impact selected city buildings. Therefore, the ordinance is administrative in nature.

The third criteria is most clearly met by the proposed ordinance. The ordinance seeks to allow citizens to make decisions that require specialized training, experience in municipal government and knowledge of the fiscal affairs of the City. City buildings are financed by a large number of complex funding sources. The City adopts a ten-year plan for capital

improvements. Decisions regarding the use of active life and uses of public facilities is determined by a number of factors: available funding, community needs, long-term expenditures for infrastructures and the City's overall revenue and expenses for each year.

Further, municipal governments are required to comply with state and federal laws regarding the funding and contracting requirements for building and maintaining municipal buildings. *e.g.*, Kansas Cash-Basis Law, K.S.A. 10-1101 *et seq.* and Kansas Budget Laws, K.S.A. 79-2935. State statutes prescribe separate design, public bidding and demolition/construction phases for any public works project undertaken by Cities of the First Class.

Decisions regarding the maintenance, construction, improvements and demolition of public buildings require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make rational choices regarding the maintenance of such buildings. (Affidavit of Ben Nelson, Exhibit D.)

To allow citizens to determine if a building should be maintained in perpetuity regardless of the City's financial situation and usefulness of the building for public purposes is improper. The Kansas courts have found several similar ordinances to be administrative and improper for the initiative process.

In *McAlister v. City of Fairway*, 289 Kan. 391, 212 P.3d 184 (2009), the court concluded that an ordinance placing restrictions on the relocation of city hall was administrative. Decisions regarding where municipal facilities should be located necessarily required specialized knowledge and expertise. Likewise, in *Wichita v. Kansas Taxpayers Network*, 255 Kan. 534, 874 P.2d 667 (1994), the court held that any ordinance seeking to repeal ordinances establishing a storm water management system were administrative. The court concluded:

[T]he operation, management and financing of a city-wide storm management system reasonably fits within the context of decisions that require specialized knowledge and experience with respect to city management. The physical structure of the system, maintenance and fee assessment and collection all fit within the purview of the city's expertise.

255 Kan. 534, 541 (1994).

Further, the court in *Wichita v. Fitzgerald*, concluded that an ordinance seeking repeal of all licensing and zoning requirements in reference to firearms was administrative, 22 Kan. App. 2d 428, 916 P.2d 1301 (1996). *See also Lawrence v. McArdle*, 214 Kan. 862, 871, 522 P.2d 420 (1974) (Ordinance establishing salary classifications for firefighters was an administrative ordinance). Lastly, the Kansas Attorney General has issued several opinions concluding that municipal ordinances were administrative and not allowed to be adopted pursuant to the initiative process. Ordinance determining location of fire stations was administrative ordinance. 99 Op. Att'y Gen. 59 (1999). Ordinance prohibiting extension of city services to casino was administrative ordinance 07 Op. Att'y Gen 42. (2007). Based on these cases, the proposed ordinance is administrative.

The last criteria to be reviewed is whether the subject is one of statewide concern in which the legislature has delegated decision-making powers not to the local electors, but to the local council or board as the state's designated agent for implementation of state policy. Such actions are deemed to be administrative in nature. *Rauh v. City of Hutchinson*, 223 Kan. 514, 575 P.2d 517 (1978).

Courts and Attorney General Opinions have concluded that an ordinance is administrative if it involves the execution of a law that gives the governing body the power to do certain activities. *See: Rauh v. City of Hutchinson*, 223 Kan. 514, 519, 575 P.2d 517 (1978) and

82 Op. Att’y Gen. 98 (1982), 84 Op. Att’y Gen. 95 (1984), 92 Op. Att’y Gen. 136 (1992) and 95 Op. Att’y Gen. 42 (1995).

Municipal corporations are creations of law and can exercise powers conferred only by law. *Yoder v. City of Hutchinson*, 171, Kan. 1, 8, 228 P.2d 918 (1951). K.S.A. 12-101 expressly states that cities have the power to “purchase ... and hold, real and personal property” and “make all contracts and do all other acts in relation to the property and concerns of the city.” The powers of the city are exercised by the governing body of the city, in this case, the mayor and city council. *See*: K.S.A. 12-103, 12-104 and *Jayhawk Racing Props. L.L.C v. City of Topeka*, 56 Kan. App. 2d. 479, 489, 432 P.3d 678 (2018).

The legislature has delegated to cities the power to dispose of city property in a manner conducive to the city’s interest. *City of Argentine v. State*, 46 Kan. 430, 435, 26 P. 751 (1891). K.S.A. 12-1739 allows cities to sell public buildings “upon such terms and in such manner as the governing body may deem to be in the best interests of the City.” *See also*: K.S.A. 12-1656 (sale of surplus real estate); K.S.A. 12-1773 (sale of property acquired by a city pursuant to a redevelopment plan); K.S.A. 12-1301 (sale of land for park purposes) and K.S.A. 12-17,104 (sale of property upon dissolution of municipal improvement district).

In this case, the proposed ordinance seeks to execute existing laws dealing with the sale or disposition of city-owned real property which the legislature has determined should be addressed by the city governing body and not the electorate. Furthermore, the ordinance deals with a small segment of an overall policy involving the disposition of city property which requires knowledge of the fiscal and other affairs of the city. *See also*: 95 Op. Att’y Gen. 42 (1995) (Ordinance requiring property to be sold to highest bid was administrative and not subject to initiative process.)

Based on the four criteria set forth by the Kansas Courts and Kansas Attorney General's Office, the proposed ordinance is administrative and is not properly subject to the initiative process set forth in K.S.A. 12-3013.

**IV. The Proposed Ordinance Is Void As It Exceeds The City's Legal Authority To Call For A Binding Election.**

Kansas Courts have held that cities are not required to place an invalid or unconstitutional ordinance on a ballot for public vote. *State ex rel. Frizzell v. Paulson*, 204 Kan. 857 (1970), 456 P.2d 982 and *Schmidt v. City of Wichita*, 303 Kan. 650, 367 P.3d 282 (2016).

Article 4 of the Kansas Constitution provides that "all elections by the people shall be by ballot or voting device or both as the legislature shall be law provide." Art. IV, Kansas Constitution, Section 1. The Constitution provides that any authority for an election must come from the legislature. The proposed ordinance is void as there is no statutory authorization for the City to call for a binding public election to dispose of City owned buildings.

"It is fundamental that a valid election cannot be called and held except by authority of the law. There is no inherent right in the people, whether of the state or of some particular subdivision to hold an election for any purpose." 26 Am Jur. 2d Elections Section 183. An election held without the proper constitutional or statutory authority or contrary to a material provision of law is void. The Kansas Legislature alone has the authority to provide for calling of a binding election. This general rule of law has been followed in Kansas. *Mathews v. Commissioners of Shawnee Co*, 34 Kan. 606, 9 P. 765, 9 P. 765 (1886) and *State ex. rel. Burnett. v. Deck*, 106 Kan. 518, 188 P. 238 (1920) (County commissioners could not call a special election regarding the recall of a commissioner).

The Kansas Attorney General examined this issue when interpreting a Charter Ordinance which provided that the Topeka Building Commission could call for an election regarding

revenue bonds if a sufficient protest petition was presented. In construing the ordinance, the Attorney General concluded that the Home Rule Amendment did not allow the City of Topeka to pass an ordinance which authorized a separate governmental subdivision to conduct a binding election. 95 Op. Att’y Gen. 33 (1995). *See also*: 82 Op. Att’y Gen. 146 (1982) (A public election at taxpayer expense cannot be called and held absent express constitutional or statutory authorization.)

Most recently this issue was addressed by the court in *Bissessarnath Ramcharan-Maharajh v. Gilliland*, 48 Kan. App. 2d 137, 286 P.3d 216 (2012) in examining a proposed referendum petition. In this case, the plaintiff sought to bring a referendum regarding the City of Osage’s resolutions to participate in the Kansas Department of Transportation’s Rails to Trails project. The petition was denied by both the County Clerk and County Counselor as there was no statutory basis to allow the referendum election. In determining that there was no statutory right to a referendum and that the city could not enter into an agreement to call for a referendum election, the court stated that the Kansas Constitution provides for referendums only in such cases as prescribed by the legislature. Kan. Const. Art 12, § 5(b). As there was no constitutional right to a referendum, the city could not agree to hold a referendum election unless specifically authorized by state law. 48 Kan. App. 2d 137, 139 (2012).

As in *Bissessarnath Ramcharan-Maharajh*, the proposed ordinance seeks to require the City Council to call a binding public election prior to the disposition of any historically or architecturally significant publicly owned building. There is no statutory authority which would allow the city to call a binding election to determine the disposition of a building. While the city may have the legal authority to call for an advisory election, it does not have the authority to require the election commissioner to hold a binding election. *See*: 94 Op. Att’y Gen. 106 (1994)

and 79 Op. Att’y Gen. 44 (1979). The governing body of a city may, pursuant to its Home Rule Authority granted by Art. 12, Section 5 of the Kansas Constitution, call and hold an advisory election, provided such advisory election is for a public purpose and is not an unauthorized delegation of legislative authority. *Blevins v. Board of Douglas Co. Comm’s*, 251 Kan. 374, 383, 834 P.2d 1344 (1992).

Lastly, the proposed ordinance is invalid as it conflicts with the requirements of K.S.A. 12-3013. The proposed ordinance requires that an election be held, in the future, each time the city seeks to remodel or demolish any city-owned building of historical or architectural significance. In essence, the ordinance is specifying that the City agrees, for a period of at least ten years, to the submission of these decisions to a public vote by the way of a referendum without complying with the requirements of K.S.A. 12-3013 regarding the submission of petitions with sufficient signatures to mandate such an election. *See*: K.S.A. 12-3013(a). As such, the proposed ordinance is in conflict with state law. The petition should be declared invalid, as the proposed ordinance would be invalid if passed by the electors.

#### **V. The Proposed Ordinance Is Unconstitutionally Vague.**

If a municipality is presented with a valid petition, the city must either pass the ordinance without alteration within 20 days or call a special election allowing the city’s electors to vote on it (emphasis added). *McAlister v. City of Fairway*, 289 Kan. 391, 401, 212 P.3d 184 (2009), K.S.A. 12-3013(a).

As presented, the proposed ordinance is unconstitutionally vague. The standard for determining whether a statute is unconstitutional for vagueness is a common sense determination of fairness. Can an ordinary person exercising ordinary common sense understand and comply with the statute? If so, it is not unconstitutionally vague. *Harris v. McRae*, 448 U.S. 297, 311,

65 L. Ed. 2d 784, 100 S. Ct. 2671 *reh denied*, 448 U.S. 917 (1980), *CSC v. Letter Carriers*, 413 U.S. 548, 37 L. Ed. 2d 796, 93 S. Ct. 2880 (1973). *See also Guardian Title Co. v. Bell*, 248 Kan. 146, 150, 805 P.2d 33 (1991). When determining whether a statute is unconstitutionally vague, greater leeway is to be afforded statutes regulating businesses than those proscribing criminal conduct. *In re Brooks*, 228 Kan. 541, 618 P.2d 814 (1988).

As written, the City Council would be forced to speculate as to what buildings could be demolished, remodeled or replaced or “otherwise adversely affected” without a public vote. While the ordinance references two specific buildings, Century II and the former Public Library, the City has over 500 buildings and structures, ranging from park shelters, gazebos and bathrooms to large museums and other buildings housing city services.

The ordinance does not define “historical importance or architectural significance.” While city ordinances relating to the designation of places and property on the historical registry utilize similar terms, *See* Section 2.12.1016 of the Code of the City of Wichita, the scope of the proposed ordinance is broader than properties listed on the historical registry. Because the petition fails to include an ordinance number or title section, it is unclear if these definitions were intended to be applied to the proposed ordinance.

Without defining these terms, the determination of what buildings would be historically important could be a subject of public debate. Is a 50-year-old park gazebo of historical significance? Is a building designed by a famous architect “significant” if there are 20 similar buildings in the community? Further, what constitutes a “building” is also not defined by the ordinance. Are park shelters, restrooms or gazebos considered to be buildings which would require a public vote before they were demolished?

Lastly, the ordinance is so broad that it could be interpreted to require standard leases or minor repairs to require a public vote. The ordinance provides that a vote is required before property is “leased, sold ... and thereafter demolished, replaced ... **or otherwise adversely affected.**” (emphasis added) What actions would or could “adversely affect” a public building are likewise not defined by the proposed ordinance.

If a decision was made to replace all the carpet and remodel the City Council chambers, do these actions “adversely affect the building?” If the Fresh Air Baby Camp (which is listed on the historical registry) was vandalized and all the windows and doors were broken out, could the City temporarily board up the structure without a City vote? If Century II was leased to Music Theatre and the organization wanted to replace wooden stages with plastic flooring, would the city be required to call for a public vote before the facility could be leased and modifications made?

The proposed ordinance is so vague and overboard that the City Council would be forced to speculate as to whether a public vote was required prior to leasing, selling, completing maintenance or demolition of any city-owned facility. Due to its vagueness, the ordinance is invalid. As stated previously, the City is not required to place invalid ordinances on the ballot for consideration by voters. The City’s request for a declaratory judgment finding the ordinance unconstitutional should be granted.

## CONCLUSION

The City's Petition for Declaratory Judgment should be granted by the Court. The petition is invalid for failure to comply with the legal requirements of K.S.A. 12-3013 and K.S.A. 25-3601. The proposed ordinance is an administrative ordinance which cannot be adopted pursuant to K.S.A. 12-3013 and as proposed the ordinance is unconstitutionally vague. Lastly, the ordinance is void as it exceeds the city's legal and statutory authority to call for a binding election.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY

/s/ Sharon L. Dickgrafe

Sharon L. Dickgrafe, #14071

Chief Deputy City Attorney

City Hall - 13th Floor

455 North Main

Wichita, Kansas 67202

(316) 268-4681

[sdickgrafe@wichita.gov](mailto:sdickgrafe@wichita.gov)

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing on the 29th day of July, 2020, with the Clerk of the Court by using the CM/ECF system, which will provide a notice of electronic filing to counsel of record. A copy was sent via personal service and U.S. Mail to the Defendants below:

Karl Peterjohn  
11328 W. Texas  
Wichita, Kansas 67209  
[kpeterjohn@sbcglobal.net](mailto:kpeterjohn@sbcglobal.net)

Celeste Racette  
2239 N. Tee Time  
Wichita, Kansas 67205  
[Mcr112@yahoo.com](mailto:Mcr112@yahoo.com)

/s/ Sharon L. Dickgrafe

Sharon L. Dickgrafe, #14071

**PETITION TO THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS**  
Pursuant to Applicable Kansas Law

RECEIVED  
JAN 10 2020

Shall the following ordinance become effective:

BE IT ORDAINED THAT THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

BY: .....

No prominent city owned buildings of historical importance or architectural significance (regardless of historic register status), including Century II and the adjoining former Public Library, shall be demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita, and further, no interest in such city owned buildings, including Century II and the adjoining former Public Library, shall be leased, sold, bartered, traded, conveyed or assigned and thereafter demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita.

I have personally signed this petition.

I am a registered elector of the State of Kansas and the City of Wichita, County of Sedgwick, and my residence address is correctly written after my name.

#	Date	Signature	Printed Name	Printed Address
1				Wichita, KS
2				Wichita, KS
3				Wichita, KS
4				Wichita, KS
5				Wichita, KS
6				Wichita, KS
7				Wichita, KS
8				Wichita, KS
9				Wichita, KS
10				Wichita, KS

State of Kansas     )  
                                  ) ss:  
County of Sedgwick    )

I am the circulator of this petition and a resident of the State of Kansas and possess the qualifications of an elector of the State of Kansas. I have personally witnessed the signing of the petition by each person whose name appears thereon. I believe the statements made herein and that each signature appended to the paper is the genuine signature of the person whose name it purports to be.

\_\_\_\_\_  
Signature of Circulator

\_\_\_\_\_  
Circulator's Residence Address

Signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_

\_\_\_\_\_  
Circulator Print Name

My appointment expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public





Sedgwick County...  
working for you

---

Office of the County Counselor

Michael D, Pepon County Counselor

525 North Main, Suite 359, Wichita, KS 67203-3790 –TEL: 316-660-9340 – FAX: 316-383-7007

Michael.Pepon@sedgwick.gov

January 10, 2020

Karl Peterjohn

Delivered by email: kpeterjohn@sbcglobal.net

Windell G. Snow

Law Offices of Windell G. Snow, P.A.

8100 E 22<sup>nd</sup> Ste 2100-2

Wichita, KS 67220

Also delivered by: Email: wgaslaw@yahoo.com

Fax: 316-613-3884

Re: Written Opinion on the Sufficiency of the Form of the Question - Initiative  
Petition Submitted under K.S.A. 12-3013 and 25-3601, et seq. – **the form of the  
question contained in the petition complies with the statutory requirements**

Dear Mr. Peterjohn and Mr. Snow:

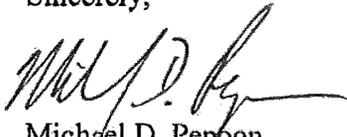
On January 10, 2020, Karl Peterjohn submitted the enclosed petition by hand-delivery to the Office of the County Counselor. K.S.A. 25-3601 requires this office to provide a written advisory opinion within 5 business days as to the legality of the form of the question. It is my opinion that the form of the question stated on the petition complies with the requirements of K.S.A. 12-3013 and 25-3601, *et seq.*

I would note that K.S.A. 25-3601(a) provides that this advisory opinion only establishes a rebuttable presumption of compliance with the requirements of the applicable statutes. Furthermore, the review that the County Counselor's Office has undertaken is limited to the proper form of the question contained within the petition. As a result, this letter is not intended to indicate whether the content of the question of the petition is or is not appropriate under Kansas law.



Please contact me if you have any questions about this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Pepoon", with a horizontal line extending to the right.

Michael D. Pepoon  
County Counselor

Enclosure

Cc: Tabitha Lehman, Sedgwick County Election Commissioner  
Jennifer Magaña, City Attorney, City of Wichita

MP/JW/dh

SHARON L. DICKGRAFE  
Chief Deputy City Attorney  
City Hall - 13th Floor  
455 N. Main  
Wichita, Kansas 67202  
(316) 268-4681

IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT

CITY OF WICHITA, KANSAS )  
A municipal corporation )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Karl Peterjohn, and Celeste Racette, )  
Individually and as representatives of )  
"Save Century 2 Committee" )  
Defendants. )  
\_\_\_\_\_ )

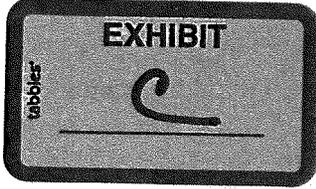
Case No. \_\_\_\_\_

**AFFIDAVIT OF KAREN SUBLETT**

STATE OF KANSAS)  
 ) ss:  
SEDGWICK COUNTY)

I, Karen Sublett, being of lawful age, and being first duly sworn, depose and swear as follows:

1. I am the Clerk of the City of Wichita. I have been employed as the Clerk of the City of Wichita since 2003.
2. On July 10, 2020, I received a petition from the "Save Century 2 Committee" regarding an ordinance which would require a public vote before any "prominent city owned building of historical importance or architectural significance ... be demolished, replaced or otherwise adversely affected."



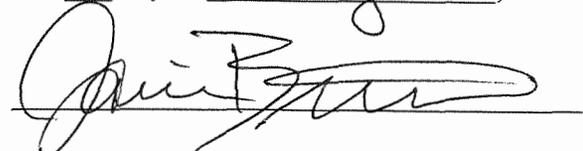
3. The attached petition (Exhibit A) is true and correct copy of the petition that was filed with my office.

4. On July 17, 2020, the petitions were taken to the Election Commissioner of Sedgwick County for verification of the signatures of electors.

FURTHER AFFIANT SAITH NOT.

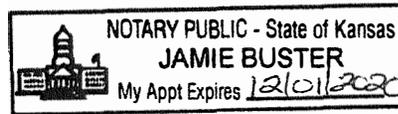
  
\_\_\_\_\_  
Karen Sublett

SUBSCRIBED AND SWORN to before me this 20 day of July, 2020.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires:

12/01/2020



**PETITION TO THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS**  
Pursuant to Applicable Kansas Law

**RECEIVED**  
JAN 10 2020

Shall the following ordinance become effective:

**BE IT ORDAINED THAT THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:**

BY: .....

No prominent city owned buildings of historical importance or architectural significance (regardless of historic register status), including Century II and the adjoining former Public Library, shall be demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita, and further, no interest in such city owned buildings, including Century II and the adjoining former Public Library, shall be leased, sold, bartered, traded, conveyed or assigned and thereafter demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita.

I have personally signed this petition.

I am a registered elector of the State of Kansas and the City of Wichita, County of Sedgwick, and my residence address is correctly written after my name.

#	Date	Signature	Printed Name	Printed Address
1				Wichita, KS
2				Wichita, KS
3				Wichita, KS
4				Wichita, KS
5				Wichita, KS
6				Wichita, KS
7				Wichita, KS
8				Wichita, KS
9				Wichita, KS
10				Wichita, KS

State of Kansas    )  
                          ) ss:  
County of Sedgwick )

I am the circulator of this petition and a resident of the State of Kansas and possess the qualifications of an elector of the State of Kansas. I have personally witnessed the signing of the petition by each person whose name appears thereon. I believe the statements made herein and that each signature appended to the paper is the genuine signature of the person whose name it purports to be.

\_\_\_\_\_  
Signature of Circulator

\_\_\_\_\_  
Circulator's Residence Address

Signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_  
Circulator Print Name

My appointment expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**AFFIDAVIT**

COMES NOW BENJAMIN CLARK NELSON, of lawful age, being first duly sworn upon oath states:

1. I am currently Interim Public Works Director for the City of Wichita. I have been employed with the City of Wichita since December 22, 2008.

2. I have a Bachelor of Arts degree in Political Science/History from Wichita State University, a Master's degree in Public Administration from Northern Illinois University and a Performance Analytics Certificate from Johns Hopkins University.

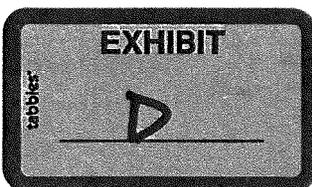
3. As Interim Public Works Director, I am responsible for oversight of four Public Works Divisions. These divisions include Public Facilities and Building Maintenance.

4. I am familiar with the processes and state and federal law requirements for municipalities to construct, maintain and/or demolish publically-owned buildings.

5. The City of Wichita owns approximately 541 buildings, excluding airport facilities. The Public Works Department maintains approximately 5.2 million square feet of building space. Sixty percent of building square footage was built prior to 1980. Additional facilities are owned and operated by the Wichita Airport Authority and the Wichita Housing Authority.

6. The City of Wichita owns a wide variety of buildings and structures utilized by City employees and citizens for a number of public purposes.

7. The types of buildings owned by the City of Wichita include but are not limited to: airport structures and hangars, police and fire stations, park shelters, swimming pools and



recreation centers, city hall, neighborhood city halls, Century II, museums, libraries, transit and other public works centers and maintenance facilities.

8. The funding to construct or demolish publically-owned buildings comes from a variety of long term and short term funding sources. These include, but are not limited to: general obligation bonds, sales tax and transit guest tax revenues, property tax revenue, utility fees for service, as well as state and federal grants. Additionally, the City has a ten-year Capital Improvement Program to ensure that funding exists to adequately repair and maintain the City's buildings and infrastructure.

9. There are a number of complex factors that must be analyzed in determining the useful life of a public building. These factors include: long range plans for use, new potential uses for the facility, programming and space needs, costs to remodel or maintain the structure, available financing mechanisms and costs of such financing.

10. In funding and contracting for the construction and maintenance of City facilities, the City is required to comply with a number of statutory provisions, including, but not limited to Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.* and the Kansas Budget Law, K.S.A. 69-2925.

11. The City's Charter Ordinance 228 exempts the City of Wichita from K.S.A. 13-1017 and establishes methods of building public improvements, which include publicly owned buildings.

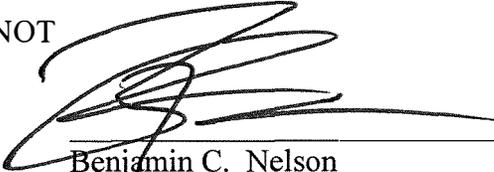
12. Decisions regarding the maintenance, construction, improvements and demolition of public buildings require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make rational and informed

decisions regarding the maintenance of such buildings. Such decisions may be based on total lifecycle costs, levels of service considerations, failure risks, and/or future programming needs.

13. The complexity of long-term building maintenance decisions requires significant analysis to determine suitable decision options. The City analyzes building maintenance approaches using a Decision Support Tool comprising nearly 12,000 assets within more than 70 types of building systems. Each asset is assigned one of 29 different asset degradation curves based on current condition. Multiple scenarios spanning 40 years and different maintenance, rehabilitation, and replacement strategies are developed. These scenarios result in a maintenance approach to optimize risk and level of services under the available budget.

14. Requiring a public vote before an existing structure/building could be remodeled or demolished would cause a significant delay, especially if the building had been damaged by natural causes or suffered an unforeseen asset failure. Such a process could further cause deterioration to the structure and lead to loss of use of the property and additional costs/expenses to the City to relocate staff and business services.

FURTHER AFFIANT SAITH NOT

  
\_\_\_\_\_  
Benjamin C. Nelson

STATE OF KANSAS        )  
  ) SS  
COUNTY OF SEDGWICK )

BEFORE ME, the undersigned authority, personally appeared BEN NELSON, who executed the foregoing instrument on this 28 day of July, 2020.

  
\_\_\_\_\_

My Commission Expires: 12/01/2020

