

multifamily housing in Prairie Village, KS.” PV United’s incorporator was Brooke Morehead, a former member of the Prairie Village City Council. PV United’s Board of Directors consists of Brooke Morehead, Sheila Meyers, Daniel Runion, and Daniel Schoepf. Meyers and Runion are also former members of the Prairie Village City Council. Each of PV United’s directors has been active in advocating for the ballot measures at issue in this action on behalf of PV United and “Stop PV Rezoning,” the latter of which is, upon information and belief, an unincorporated association of individuals who claim to be residents of the City. For all these reasons, PV United will fairly and adequately protect the interests of any and all unincorporated associations and their members in defending the legality of the petitions at issue in this matter.

3. Defendant Rex Sharp is a resident of Prairie Village, Kansas and licensed Kansas attorney who has, upon information and belief, organized, circulated and submitted the petitions at issue in this case on behalf of PV United and “Stop PV Rezoning,” the latter of which is, upon information and belief, an unincorporated association of individuals who claim to be residents of the City. Sharp has not claimed to be doing so in his capacity as an attorney, but rather as a resident of Prairie Village. Defendant Sharp has communicated on behalf of those groups when submitting the petitions at issue in this case as reflected by the letter he sent to the City Clerk attached as Exhibit A., and by the letters he sent to the Johnson County Election Office, attached as Exhibits B and C.

4. According to his online biography, defendant Sharp has 35 years of experience representing individuals and businesses in litigation matters throughout the United States and has been appointed as lead counsel many times in class action matters in nationwide and state-wide class actions. Sharp’s wife is currently a candidate for the City of Council of Prairie Village, running on a platform that appears to include the aims of the petitions at issue in this matter. For

all these reasons, Sharp will fairly and adequately protect the interests of any and all unincorporated associations and their members in defending the legality of the petitions at issue in this matter.

5. Through this action, the City seeks a declaratory judgment that the City is not required to submit any of the questions by the petitions for an election on any number of grounds, among them that the petitions themselves violated Kansas law or that the ordinances that are the subject of the petitions would violate Kansas law. This Court therefore has jurisdiction over this action pursuant to K.S.A. 60-1701.

6. Because defendant Sharp is a resident of Johnson County, Kansas, PV United's registered office is in Johnson County, and the City is located within Johnson County, venue of this action is proper in Johnson County.

7. K.S.A. 25-3601 et seq. set forth the general procedures and requirements for the use of petitions "if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality."

8. K.S.A. 25-3601(d) provides that "when any other statute imposes specific requirements which are different from the requirements imposed by K.S.A. 25-3601 et seq., and amendments thereto, the provisions of the specific statute shall control."

COUNT I – REZONING PETITION

9. K.S.A. 12-3013 is a specific statute addressing petitions for the adoption of a municipal ordinance and therefore applies, to the extent of any conflict with K.S.A. 25-3601 et seq., to petitions seeking the adoption of an ordinance by the City.

10. On or about April 25, 2023, defendant Sharp submitted to the Johnson County Counselor for review pursuant to K.S.A. 25-3601(a) an "Initiative Petition Under K.S.A. 12-3013

for an Ordinance Regarding Limiting Rezoning that Would Allow Accessory Dwelling Units or Other Dwellings for More than One Family to Reside on a Lot in a Single Family Residential Zoning District.” This petition is referred to hereafter as the Rezoning Petition, and an exemplar as signed by alleged electors of the City is attached as Exhibit D.

11. On May 1, 2023, the County Counselor provided her opinion that the “form of the question presented in this petition form conforms with statutory requirements.” The County Counselor provided caveats to her opinion, expressly disclaimed any opinion as to whether the petition form itself complied with any applicable statutory requirements, and noted that notwithstanding her disclaimer, the petition form itself might not comply with statutory requirements. A copy of the County Counselor’s letter is attached as Exhibit E.

12. Despite the County Counselor’s letter, defendants arranged for the circulation of the Rezoning Petition in the same form as presented to the County Counselor, and defendant Sharp submitted it with the purported signatures of 3,707 alleged electors of the City to the City Clerk on August 1, 2023.

13. The City transmitted the original petitions submitted by defendant Sharp to the Johnson County Election Office for verification of the signatures and a determination as to whether the requisite percentage of the City’s electors (25% of the electors who voted at the last preceding regular City election as required by K.S.A. 12-3013(a)) signed the Rezoning Petition.

14. On August 14, 2023, the Johnson County Election Commissioner determined that the Rezoning Petition required 3,130 valid signatures, and that he “accepted” 3,213 of the 3,709 signatures submitted by defendant Sharp. The Election Commissioner explicitly stated that he was making “no determination as to the legal sufficiency of the petition.” See Letter from Johnson County Election Commissioner, Exhibit F.

15. K.S.A. 25-3601(e) requires that “[a]ny action challenging the validity of the form of a question in a petition shall be filed in the district court within 20 days after such petition has been filed with the county election office.” (The same statute requires the Court to render an opinion in any action challenging the form of a question in a petition within 20 days after the action is filed.) The City does not believe that all of the challenges it is raising to the Rezoning Petition are to the validity of the form of the question presented in the Rezoning Petition but is combining its challenges as to form of the question and the form, substance, legality and sufficiency of the Rezoning Petition in this suit should the Court believe that a particular challenge is to the form of the question presented. Although the Election Commissioner did not explain why he rejected some signatures or specify which of them he rejected, the City is aware of several ways in which many signatures on the Rezoning Petition are invalid. For instance:

- a. In some cases, purported electors signed the Rezoning Petition after the circulator had attested to having witnessed the signatures on the Rezoning Petition. So those signatures were not properly attested.
- b. Many signatures were not dated, even though K.S.A. 25-3602 requires that signatures be dated.

16. The form of the Rezoning Petition violated K.S.A. 12-3013(a) because that statute required that each person collecting signatures (referred to in K.S.A. 25-3602(b) as the petition’s “circulator”) include in their sworn written affirmation that “each signature to the paper appended is the genuine signature of the person whose name it purports to be.” The form of the Rezoning Petition did not include this statement in the circulator’s oath (shown on page 9 of Exhibit D) even though the County Counselor’s letter to defendant Sharp (Exhibit E) noted this deficiency. As a result, the circulators of the Rezoning Petition failed to swear to the authenticity of the signatures they collected, rendering the Rezoning Petition invalid.

17. The ordinance proposed by the Rezoning Petition is an administrative ordinance, within the meaning of *McAlister v. City of Fairway*, 289 Kan. 391 (2009), and may not therefore be the subject of a petition since K.S.A. 12-3013(e) precludes “administrative ordinances” from being adopted through the petition process. Among other reasons:

- a. The ordinance proposed by the Rezoning Petition seeks to impact only a select portion of the City’s overall comprehensive planning scheme;
- b. The ordinance proposed by the Rezoning Petition intrudes into areas of the City’s government that require specialized training and experience because, among other reasons, it adopts a definition of “rezoning” that would apply throughout the City’s Zoning Regulations without consideration of how that definition would impact other zoning matters, rendering some other parts of the City’s Zoning Regulations nonsensical; would place other parts of the City’s Zoning Regulations into conflict with Kansas law; and create other conflicts with federal and Kansas law; and
- c. The subject of zoning is one of statewide concern where the Kansas Legislature has delegated to the City’s planning commission and governing body the responsibility for land use regulations.

18. The ordinance proposed by the Rezoning Petition is factually and legally inaccurate in stating that “Kansas statutes do not delegate rezoning exclusively to the governing body.”

19. The ordinance proposed by the Rezoning Petition is riddled with drafting errors that render it vague and susceptible to litigation over its meaning or enforcement. For instance, Section 1 purports to define the term “Rezoning”: “*Rezoning* means changing a lot from a more restrictive zone to a less restrictive zone, such as permitting two or more families living or dwelling on a lot in a currently single-family residential zone (R-1), or permitting three **of** more families living or dwelling on a lot in a currently two-family residential zone (R-2)” (Emphasis showing drafting error.) Section 2(c) states that “Rezoning initiated by the governing body and/or the planning commission shall post a rezoning sign on each lot to be rezoned in the same manner as required Section 19.28.025 substituting ‘rezoning application’ for ‘special use permit’ on the sign.” This language raises the question of who is supposed to post this sign, and under what circumstances.

20. Other problems and unintended consequences that might ensue from adoption of the ordinance proposed by the Rezoning Petition are set forth in the declaration of Chris Brewster, attached as Exhibit G. Mr. Brewster's declaration also provides a factual basis for the conclusion that the proposed ordinance is an administrative ordinance.

21. These problems with the Rezoning Petition are exacerbated by K.S.A. 12-3013(c), which states that if the ordinance proposed by the Rezoning Petition were to be approved by voters, it cannot be repealed or even amended except (a) by a vote of the electors, or (b) by the governing body of the City until the ordinance has been in effect for ten years. The term "rezoning" is used at several places in the City's Zoning Regulations and in several contexts outside that contemplated by the Rezoning Petition. Yet the Rezoning Petition proposes an ordinance that would give the term a narrow definition that could not be changed for ten years without the expense of another election. Similarly, the drafting errors and other problems with the ordinance proposed by the Rezoning Petition could not be corrected by the governing body for ten years and could only be corrected by a subsequent election.

22. The Rezoning Petition as signed violates K.S.A. 25-3602(b)(3) because the recital required by that statute was not placed above the spaces provided for all signatures on the Rezoning Petition; many signatures were collected on sheets of paper that did not contain the required recital, and indeed, citizens have contacted City officials complaining that circulators of the petitions at issue in this case misrepresented the nature of the petitions to secure signatures.

WHEREFORE, plaintiff City of Prairie Village, Kansas requests that the Court declare that the Rezoning Petition is invalid due to its noncompliance with Kansas statutes, that the ordinance it proposes is an administrative ordinance, that the City is therefore not required to submit it to a

vote of the electors of the City, and that the Court enter any other relief the Court deems appropriate.

COUNT II – ABANDONMENT PETITION

23. The City incorporates by reference the allegations of paragraphs 1 through 22.

24. K.S.A. 12-184 is a specific statute addressing the adoption or abandonment of forms of city government and therefore applies, to the extent of any conflict with K.S.A. 25-3601 et seq., to petitions seeking the abandonment of a form of government by the City. However, K.S.A. 12-184(c) requires that petitions requesting the submission of a question to voters on the abandonment or adoption of a form of government comply with the requirements of Chapter 25, Article 36 of the Kansas Statutes Annotated.

25. On or about April 25, 2023, defendant Sharp submitted to the Johnson County Counselor for review pursuant to K.S.A. 25-3601(a) a “Petition for an Election of the City of Prairie Village, Kansas to Vote on the Abandonment of the Mayor-Council Form of Government.” This petition seeks to abandon the Mayor-Council form of government in the City, is referred to hereafter as the Abandonment Petition, and an exemplar of this petition as signed by alleged electors of the City is attached as Exhibit H.

26. On May 1, 2023, the County Counselor advised defendant Sharp that the form of the question in the proposed Abandonment Petition did not comply with statutory requirements because “K.S.A. 25-620 requires that the language ‘Shall the following be adopted?’ precede the proposition or question to be voted on,” and this was not included in the form of Abandonment Petition presented to the County Counselor. *See* Exhibit E.

27. Despite the County Counselor’s opinion, defendants arranged for the circulation of the Abandonment Petition in the same form as presented to the County Counselor, and defendant

Sharp submitted it with the purported signatures of 2,178 alleged electors of the City to the Johnson County Election Office on August 1, 2023.

28. On August 14, 2023, the Johnson County Election Commissioner determined that the Abandonment Petition required 1,945 valid signatures, and that he “accepted” 2,010 of the signatures submitted by defendant Sharp. The Election Commissioner explicitly stated that he was making “no determination as to the legal sufficiency of the petition.” See Letter from Johnson County Election Commissioner, Exhibit I.

29. K.S.A. 25-3601(e) requires that “[a]ny action challenging the validity of the form of a question in a petition shall be filed in the district court within 20 days after such petition has been filed with the county election office.” (The same statute requires the Court to render an opinion in any action challenging the form of a question in a petition within 20 days after the action is filed.) The City does not believe that all of the challenges it is raising to the Abandonment Petition are to the validity of the form of the question presented in the Abandonment Petition but is combining its challenges as to form of the question and the form, substance, legality and sufficiency of the Abandonment Petition in this suit should the Court believe that a particular challenge is to the form of the question presented. Although the Election Commissioner did not explain why he rejected some signatures or specify which of them he rejected, the City is aware of several ways in which many signatures on the Abandonment Petition are invalid. For instance, in some cases, purported electors signed the Abandonment Petition after the circulator had attested to having witnessed the signatures on the Abandonment Petition. So those signatures were not properly attested.

30. The form of the question presented in the Abandonment Petition did not comply with Kansas law for the reason stated by the County Counselor, so the Abandonment Petition is illegal and the question it presents may not be placed on the ballot for that reason alone.

31. The Abandonment Petition also violated Kansas law because K.S.A. 25-3602(b)(1) requires that petitions “[s]tate the question which petitioners seek to bring to an election in the form of a question as it should appear upon the ballot in accordance with the requirements of K.S.A. 25-620 and 25-3601.” K.S.A. 25-620 requires that ballots for propositions or questions include squares next to the words “Yes” and “No,” with instructions to voters to “make a cross or check mark” in the square corresponding with their choice. Each of the Abandonment Petitions presented to the Election Office already had the “Yes” box checked in violation of Kansas law, thus rendering the Abandonment Petitions illegal.

32. The Abandonment Petition as signed violates K.S.A. 25-3602(b)(3) because the recital required by that statute was not placed above the spaces provided for all signatures on the Rezoning Petition; many signatures were collected on sheets of paper that did not contain the required recital, and indeed, citizens have contacted City officials complaining that circulators of the petitions at issue in this case misrepresented the nature of the petitions to secure signatures.

33. The Abandonment Petition is also invalid because of its interplay with the third petition defendant Sharp submitted, as will be shown in the next count.

WHEREFORE, plaintiff City of Prairie Village, Kansas requests that the Court declare that the Abandonment Petition is invalid for the reasons stated above, that the City is therefore not required to submit it to a vote of the electors of the City, and that the Court enter such other relief as the Court deems appropriate.

COUNT III – ADOPTION PETITION

34. The City incorporates by reference the allegations of paragraphs 1 through 33.

35. K.S.A. 12-184 is a specific statute addressing the adoption or abandonment of forms of city government and K.S.A. 12-1039 is a specific statute governing the adoption of the Mayor-Council Manager form of government. These statutes therefore apply, to the extent of any conflict with K.S.A. 25-3601 et seq., to petitions seeking the adoption of the Mayor-Council Manager form of government by the City. However, K.S.A. 12-184(c) requires that petitions requesting the submission of a question to voters on the abandonment or adoption of a form of government comply with the requirements of Chapter 25, Article 36 of the Kansas Statutes Annotated.

36. On or about April 25, 2023, defendant Sharp submitted to the Johnson County Counselor for review pursuant to K.S.A. 25-3601(a) a “Petition for an Election of the City of Prairie Village, Kansas to Vote on the Adoption of the Mayor-Council Manager Form of Government.” This petition seeks to adopt the Mayor-Council Manager form of government in the City, but also to replace the current 12-person City Council with a six-person City Council, all of whose members would be elected in November 2023, thereby ejecting from office the six members who were elected to four-year terms in 2021. That petition is referred to hereafter as the Adoption Petition, and an exemplar as signed by alleged electors of the City is attached as Exhibit J.

37. On May 1, 2023, the County Counselor advised defendant Sharp that the form of the question in the proposed Adoption Petition did not comply with statutory requirements because K.S.A. 25-620 “requires that the language ‘Shall the following be adopted?’ precede the proposition or question to be voted on,” and this was not included in the form of Adoption Petition presented to the County Counselor. *See* Exhibit E.

38. Despite the County Counselor’s opinion, defendants arranged for the circulation of the Adoption Petition in the same form as presented to the County Counselor, and defendant

submitted it with the purported signatures of 2,176 alleged electors of the City to the Johnson County Election Office on August 1, 2023.

39. On August 14, 2023, the Johnson County Election Commissioner determined that the Adoption Petition required 1,945 valid signatures, and that he “accepted” 2,042 of the signatures submitted by defendant Sharp. The Election Commissioner explicitly stated that he was making “no determination as to the legal sufficiency of the petition.” See Letter from Johnson County Election Commissioner, Exhibit K.

40. K.S.A. 25-3601(e) requires that “[a]ny action challenging the validity of the form of a question in a petition shall be filed in the district court within 20 days after such petition has been filed with the county election office.” (The same statute requires the Court to render an opinion in any action challenging the form of a question in a petition within 20 days after the action is filed.) The City does not believe that all of the challenges it is raising to the Adoption Petition are to the validity of the form of the question presented in the Adoption Petition but is combining its challenges as to form of the question and the form, substance, legality and sufficiency of the Adoption Petition in this suit should the Court believe that a particular challenge is to the form of the question presented. Although the Election Commissioner did not explain why he rejected some signatures or specify which of them he rejected, the City is aware of several ways in which many signatures on the Adoption Petition are invalid. The City is already aware, though, of several ways in which many signatures on the Adoption Petition are invalid.

41. For instance, in some cases, purported electors signed the Adoption Petition after the circulator had attested to having witnessed the signatures on the Adoption Petition. So those signatures were not properly attested.

42. Also, on one of the Adoption Petitions, the circulator wrote this on the top of the petition: “#2 Eliminate Mayor Strong go to Mayor-Council form of government.” The City currently has in place the “Mayor-Council” form of government, so anyone who signed this petition was not validly informed about the Adoption Petition’s purpose. The inclusion of this language on the petition also violated K.S.A. 25-3602(b)(1), which requires that petitions “[s]tate the question which petitioners seek to bring to an election in the form of a question as it should appear upon the ballot in accordance with the requirements of K.S.A. 25-620 and 25-3601.” This particular petition, attached as Exhibit L, posed two separate and contradictory questions to those who were asked to sign the petition and was thus invalid.

43. The form of the question presented in the Adoption Petition did not comply with Kansas law for the reason stated by the County Counselor, so the Adoption Petition is illegal and the question it presents may not be placed on the ballot for that reason alone.

44. The ordinance proposed by the Adoption Petition would violate Kansas law because K.S.A. 12-1039(c) provides that if voters approve the adoption of the Mayor-Council Manager form of government, then “at the next regular city election the governing body of the city shall be elected as provided in the resolution or petition.” This necessarily means that the members of the governing body under the Mayor-Council Manager form of government cannot be elected at the same election at which voters choose to adopt that form of government. Yet the Adoption Petition would have the City’s voters change the form of government and elect the members of the governing body for that form of government simultaneously. This is prohibited under Kansas law.

45. The ordinance proposed by the Adoption Petition would further violate Kansas law because K.S.A. 12-1039(b) requires that a petition for the adoption of a Mayor-Council Manager form of government “establish the membership and terms of office of the governing body.” Under

the Mayor-Council Manager form of government, the Mayor is a member of the governing body for the purpose of voting on the passage of a charter ordinance and may be considered a part of the governing body for purposes of voting on any other matter if the City Council adopts an ordinance to that effect by a 2/3 majority. K.S.A. 12-104. The Adoption Petition proposes that “the currently elected at large Mayor” would continue to serve and that “the current at large Mayor (as well as members of the City Council elected in 2023) shall serve two-year terms.” The Adoption Petition does not establish the term of office for the position of Mayor beyond the “current” person serving in that office and does not establish the Mayor’s term of office going forward. It therefore violates Kansas law.

46. The Adoption Petition also violated Kansas law because K.S.A. 25-3602(b)(1) requires that petitions “[s]tate the question which petitioners seek to bring to an election in the form of a question as it should appear upon the ballot in accordance with the requirements of K.S.A. 25-620 and 25-3601.” K.S.A. 25-620 requires that ballots for propositions or questions include squares next to the words “Yes” and “No,” with instructions to voters to “make a cross or check mark” in the square corresponding with their choice. Each of the Adoption Petitions presented to the Election Office already had the “Yes” box checked in violation of Kansas law, thus rendering the Adoption Petition illegal.

47. In her letter to defendant Sharp, the County Counselor also noted that placing the Abandonment and Adoption Petitions before electors at the same election could lead to inconsistent results. For instance, if the Abandonment Petition is approved by voters and the Adoption Petition is not approved, the City may have no form of government in place at all. If the Adoption Petition is approved and the Abandonment Petition is not approved, the City would have two forms of government in place. Placing both petitions before voters in the same election

therefore potentially results in a violation of Kansas law since cities must have in place at all times one and only one form of government.

48. The Adoption Petition as signed violates K.S.A. 25-3602(b)(3) because the recital required by that statute was not placed above the spaces provided for all signatures on the Rezoning Petition; many signatures were collected on sheets of paper that did not contain the required recital, and indeed, citizens have contacted City officials complaining that circulators of the petitions at issue in this case misrepresented the nature of the petitions to secure signatures.

WHEREFORE, plaintiff City of Prairie Village, Kansas requests that the Court declare that the Adoption Petition is invalid for the reasons stated above, that the City is therefore not required to submit it to a vote of the electors of the City, and that the Court enter such other relief as the Court deems appropriate.

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August 1, 2023

HAND DELIVERED

Adam Geffert
Prairie Village City Clerk
7700 Mission Road
Prairie Village, KS 66208

Dear Sir/Madam,

The PV Ad Hoc Housing Committee was comprised of UCS housing members and, with scant public input, unanimously recommended changing R-1 Single Family Residential zones to allow two or more families per lot, not on a certain lot, but City-wide. Without much discussion, the PV City Council unanimously voted to send that recommendation to the Planning Commission for implementation.

PV United was formed by Prairie Village residents, including several former City Council Members, to stop this rezoning effort. PV United does not cater to outside interests, and crosses party lines as local politics should be and is nonpartisan.

PV United supporters came to the PV City Council in unprecedented numbers to stop the city-wide R-1 rezoning. Resident after resident took time out of their schedules to address their concerns. The PV City Council ignored this unprecedented outpouring of concern. Literally closing its eyes and ears. Instead, the PV City Council cut down citizen participation at its meetings (even contemplating doing away with it altogether). When that did not work, the Council and Mayor encouraged residents to join and support an alternative group called PV4All (started by the Mayor's former campaign manager). The PV4All organization suggested that PV was racist and called out those who opposed R-1 rezoning as extremists, trolls, and racists. This politics of name-calling, labeling, and division emanated directly from the PV City Council.

PV United placed Stop Rezoning signs in the front yards of supporters, numbering in the several hundreds. PV4All countered with its signs numbering in the dozens and had to invite people from outside PV to speak at PV Council meetings to support it. PV City Council

EXHIBIT
A

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Adam Geffert
August 1, 2023

continued to ignore the overwhelming majority of its PV constituents. The Stop Rezoning movement is now 3,600 strong and growing in PV. Enclosed are 82 Stop Rezoning Petitions submitted as a group totaling 3,707 PV voter signatures, as well as an accompanying proposed Ordinance matching the Stop Rezoning Petition language. It's time to put this issue to a vote, to rest, and let the City heal.

We urge you to set aside party politics, personal agendas, and outside interests, and place the Stop Rezoning Petition on the November 7, 2023 ballot. The PV City Council may either (1) adopt the ordinance within 20 days *without alteration*, or (2) call a special election after 20 days, unless a regular city election is to be held within 90 days thereafter in which case the ordinance should be submitted at that election, to see if a majority of the voters in the city approve of the ordinance. If approved, the ordinance goes into effect and may not be repealed or amended without another election or without having been in effect for ten years.

Further, we would urge the PV Council Members to stop attacking the Stop Rezoning Petition and the other initiative petitions from the PV Council chambers as you are supposed to represent your 3,707 and growing group of PV resident petition signers. Nor should their taxpayer money (or anyone's taxpayer money) be spent against it or in furtherance of your personal agenda. As an interested PV resident, if you feel so inclined, engage in honest debate about how city-wide rezoning of R-1 will benefit existing PV residents and oppose it, if you will, with your own money and time as the 3,707 Stop Rezoning supporters have done.

The same goes for bringing the form of government into a more mainstream size and type. PV sits on an island of one with its form of government. Every ward will maintain its 1/6th representation, the mayor will be elected at large, and the size will be more streamlined, efficient, and cheaper (if the PC City Council decides to pay itself salaries and benefits). And if the voters like your governance, they will elect your representatives at the ballot box on November 7. Let PV residents' vote.

Sincerely,



Rex A. Sharp

Enclosure

cc: w/o Enclosure Prairie Village City Council

EXHIBIT
A

Rezoning
Petition

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**EXHIBIT
A**

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Total 3,707

EXHIBIT
A

ORDINANCE NO. _____

AN ORDINANCE REGARDING LIMITING REZONING THAT WOULD ALLOW ACCESSORY DWELLING UNITS OR OTHER DWELLINGS FOR MORE THAN ONE FAMILY TO RESIDE ON A LOT IN A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT

WHEREAS, Kansas statutes do not address (a) whether two or more families should be allowed to reside at the same time in a single family residential zone, or (b) whether accessory dwelling units (ADUs) or other dwellings in addition to the single family dwelling house in single family residential zoning districts should be allowed;

WHEREAS, the City Council of the City of Prairie Village, Kansas has been considering these subjects for almost a year, and over 200 people have publicly oppose any legislation or ordinance that would permit them;

WHEREAS, the City Council of the City of Prairie Village, Kansas has indicated it can legislate to allow both (a) and (b) above, it stands to reason that local legislation can also refuse to or limit how;

WHEREAS, the broad and overall public purpose of single family residential zoning districts is (a) to permit one family to reside on a lot at a time, not two or more families on a lot at a time; and, (b) to permit only the single family dwelling house on a lot;

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish that broad and overall public purpose;

WHEREAS, the City of Prairie Village, Kansas has been completely zoned and built out for decades, with over 90% of all of the land being in a single family residential zoning district;

WHEREAS, the local public Purpose and Intent of zoning is set forth in The Code of the City of Prairie Village, Kansas, Chapter 19.01.010;

WHEREAS, the local public Purpose and Intent of the local zoning code is geared to the single family residential zoning district to ensure the quiet enjoyment of the land by preventing congestion and overuse of a residential lot, encourage green space, and prevent increased density further burdening governmental services such as water, sewer, stormwater, electricity, internet, roads, sidewalks, parking, police, fire, parks, and schools;

WHEREAS, the City of Prairie Village, Kansas already is one of the most densely populated cities in Kansas;

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish the local public purpose and intent stated above;

WHEREAS, determining whether to allow a single or multiple families on a lot or allowing one or more dwellings per lot in a single family residential zoning district does not require specialized municipal knowledge or intimate knowledge of the city's finances;

WHEREAS, the City of Prairie Village, Kansas has been for decades and continues to be welcoming to all people to reside within it;

WHEREAS, the City of Prairie Village, Kansas has received state and national awards for livability as is;

WHEREAS, the current residents of the City of Prairie Village, Kansas were aware of and relied on the stability of the zoning rules and the zoning district when buying their residences in single family residential zones;

**EXHIBIT
A**

WHEREAS, it is the public purpose to allow owners of land to have control over the zoning of their land, and those nearby to have notice, opportunity to be heard, and protest if something is done which may impact their quiet enjoyment of their single family dwelling;

WHEREAS, Kansas statutes do not address whether an owner's land can be rezoned by the government without the owner's consent, and this Ordinance would address that issue;

WHEREAS, rezoning is not done statewide;

WHEREAS, Kansas statutes do not delegate rezoning exclusively to the governing body; and,

WHEREAS, this Ordinance provides a simple, general, and permanent solution to all of these unresolved local public issues.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1: The Code of the City of Prairie Village, Kansas shall have added Section 19.02.422 entitled "Rezoning" stating: *Rezoning* means changing a lot from a more restrictive zone to a less restrictive zone, such as permitting two or more families living or dwelling on a lot in a currently single-family residential zone (R-1), or permitting three or more families living or dwelling on a lot in a currently two-family residential zone (R-2).

Section 2: The Code of the City of Prairie Village, Kansas shall have added Section 19.52.006 entitled "Rezoning By Governing Body", stating:

- a. The governing body and/or the planning commission can initiate rezoning in an R-1 zone district only one lot at a time and only with the written consent of all owner(s) of the lot.
- b. Rezoning initiated by the governing body and/or the planning commission for each lot must comply with all notice, opportunity to be heard, and protest rights of surrounding neighbors as set forth in Sections 19.52.015 through 19.52.045.
- c. Rezoning initiated by the governing body and/or the planning commission shall post a rezoning sign on each lot to be rezoned in the same manner as required Section 19.28.025 substituting 'rezoning application' for 'special use permit' on the sign.
- d. Under rezoning initiated by the governing body and/or the planning commission, the planning commission and the governing body shall make findings of fact by clear and convincing evidence of the same factors set forth in Section 19.52.030 as well as for the factors in Section 19.28.035 except that each of the factors shall be addressed in writing to justify rezoning.

Section 3: If any provision in this Ordinance is deemed unconstitutional, contrary to law, or not permitted by initiative, that provision shall be read as if not a part of the Ordinance and the rest of the Ordinance shall remain in full force and effect.

Section 4: This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on _____, 2023.

APPROVED:

EXHIBIT

A

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

**EXHIBIT
A**

SHARP LAW

Rex A. Sharp*
Manager, Sharp Law, LLP
4820 W. 75th Street
Prairie Village, KS 66208
(913) 901-0500
rsharp@midwest-law.com

August 1, 2023

HAND DELIVERED

Fred Sherman
Johnson County Election Officer
2101 E. Kansas City Road
Olathe, KS 66061

Dear Mr. Sherman,

Enclosed are 41 Adopt Petitions submitted as a group totaling 2,176 signatures. Please determine their sufficiency as provided by law, and advise if the Adopt question will be placed on the ballot for November 7, 2023.

Sincerely,



Rex A. Sharp

Enclosure

cc: w/o Enclosure peg.trent@jocogov.org
w/o Enclosure mary.buhl@jocogov.org

**EXHIBIT
B**

SHARP LAW

Rex A. Sharp*
Manager, Sharp Law, LLP
4820 W. 75th Street
Prairie Village, KS 66208
(913) 901-0500
rsharp@midwest-law.com

August 1, 2023

HAND DELIVERED

Fred Sherman
Johnson County Election Officer
2101 E. Kansas City Road
Olathe, KS 66061

Dear Mr. Sherman,

Enclosed are 41 Abandon Petitions submitted as a group totaling 2,178 signatures. Please determine their sufficiency as provided by law, and advise if the Abandon question will be placed on the ballot for November 7, 2023.

Sincerely,



Rex A. Sharp

Enclosure

cc: w/o Enclosure peg.trent@jocogov.org
w/o Enclosure mary.buhl@jocogov.org

EXHIBIT
C

INITIATIVE PETITION UNDER K.S.A. 12-3013 FOR AN ORDINANCE REGARDING LIMITING REZONING THAT WOULD ALLOW ACCESSORY DWELLING UNITS OR OTHER DWELLINGS FOR MORE THAN ONE FAMILY TO RESIDE ON A LOT IN A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT

Shall the following be adopted?

AN ORDINANCE REGARDING LIMITING REZONING THAT WOULD ALLOW ACCESSORY DWELLING UNITS OR OTHER DWELLINGS FOR MORE THAN ONE FAMILY TO RESIDE ON A LOT IN A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT

WHEREAS, Kansas statutes do not address (a) whether two or more families should be allowed to reside at the same time in a single family residential zone, or (b) whether accessory dwelling units (ADUs) or other dwellings in addition to the single family dwelling house in single family residential zoning districts should be allowed;

WHEREAS, the City Council of the City of Prairie Village, Kansas has been considering these subjects for almost a year, and over 200 people have publicly oppose any legislation or ordinance that would permit them;

WHEREAS, the City Council of the City of Prairie Village, Kansas has indicated it can legislate to allow both (a) and (b) above, it stands to reason that local legislation can also refuse to or limit how;

WHEREAS, the broad and overall public purpose of single family residential zoning districts is (a) to permit one family to reside on a lot at a time, not two or more families on a lot at a time; and, (b) to permit only the single family dwelling house on a lot;

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish that broad and overall public purpose; and

WHEREAS, the City of Prairie Village, Kansas has been completely zoned and built out for decades, with over 90% of all of the land being in a single family residential zoning district;

WHEREAS, the local public Purpose and Intent of zoning is set forth in The Code of the City of Prairie Village, Kansas, Chapter 19.01.010; and

WHEREAS, the local public Purpose and Intent of the local zoning code is geared to the single family residential zoning district to ensure the quiet enjoyment of the land by preventing congestion and overuse of a residential lot, encourage green space, and prevent increased density further burdening governmental services such as water, sewer, stormwater, electricity, internet, roads, sidewalks, parking, police, fire, parks, and schools;

WHEREAS, the City of Prairie Village, Kansas already is one of the most densely populated cities in Kansas; and

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish the local public purpose and intent stated above;

WHEREAS, determining whether to allow a single or multiple families on a lot or allowing one or more dwellings per lot in a single family residential zoning district does not require specialized municipal knowledge or intimate knowledge of the city's finances;

WHEREAS, the City of Prairie Village, Kansas has been for decades and continues to be welcoming to all people to reside within it;

WHEREAS, the City of Prairie Village, Kansas has received state and national awards for livability as is;

WHEREAS, the current residents of the City of Prairie Village, Kansas were aware of and relied on the stability of the zoning rules and the zoning district when buying their residences in single family residential zones;

WHEREAS, it is the public purpose to allow owners of land to have control over the zoning of their land, and those nearby to have notice, opportunity to be heard, and protest if something is done which may impact their quiet enjoyment of their single family dwelling;

WHEREAS, Kansas statutes do not address whether an owner's land can be rezoned by the government without the owner's consent, and this Ordinance would address that issue;

WHEREAS, rezoning is not done statewide;

WHEREAS, Kansas statutes do not delegate rezoning exclusively to the governing body; and,

WHEREAS, this Ordinance provides a simple, general, and permanent solution to all of these unresolved local public issues.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1: The Code of the City of Prairie Village, Kansas shall have added Section 19.02.422 entitled "Rezoning" stating: *Rezoning* means changing a lot from a more restrictive zone to a less restrictive zone, such as permitting two or more families living or dwelling on a lot in a currently single-family residential zone (R-1), or permitting three of more families living or dwelling on a lot in a currently two-family residential zone (R-2).

Section 2: The Code of the City of Prairie Village, Kansas shall have added Section 19.52.006 entitled "Rezoning By Governing Body", stating:

- a. The governing body and/or the planning commission can initiate rezoning in an R-1 zone district only one lot at a time and only with the written consent of all owner(s) of the lot.
- b. Rezoning initiated by the governing body and/or the planning commission for each lot must comply with all notice, opportunity to be heard, and protest rights of surrounding neighbors as set forth in Sections 19.52.015 through 19.52.045.
- c. Rezoning initiated by the governing body and/or the planning commission shall post a rezoning sign on each lot to be rezoned in the same manner as required Section 19.28.025 substituting 'rezoning application' for 'special use permit' on the sign.
- d. Under rezoning initiated by the governing body and/or the planning commission, the planning commission and the governing body shall make findings of fact by clear and convincing evidence of the same factors set forth in Section 19.52.030 as well as for the factors in Section 19.28.035 except that each of the factors shall be addressed in writing to justify rezoning.

Section 3: If any provision in this Ordinance is deemed unconstitutional, contrary to law, or not permitted by initiative, that provision shall be read as if not a part of the Ordinance and the rest of the Ordinance shall remain in full force and effect.

Section 4: This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on _____, 2023.

APPROVED:

Eric Mikkelsen, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

The electors (voters) of Prairie Village, Kansas signed below request that the governing body pass the Ordinance referenced above or submit the same to a vote of the electors.

Petition Signatures

I have personally signed this Petition. I am a registered elector of the state of Kansas and of Prairie Village, Kansas and my residence address is correctly written after my name.

53 7/11/23 Jan 2023

Printed Name/Signature	Residence Address (Street and Number)/PV/Zip Code	Date of Signing
1. David Morrison	7812 Cinnamon PV 135 66208	7/13/23
2. James S. Trampash	4816 W. 65th St PV KS 66208	7/13/23
3. VICTORIA ANN TRAMPOSTI	4816 W 65 St PV KS 66208	7/13/23
4. Mendy J. Ruthrauff	7833 Ash St PV KS 66208	7/13/23
5. David R. Swartz	8200 Gordon DA PV 66208	7/25/23
6. Allison Tapp Guy	8224 Beverly Dr PV KS 66208	7/25/23
7. Chris David Lerdy	8209 Rosewood Ln PV KS 66208	7/25/23
8. Jennifer Marino	4001 W. 69th St PV KS 66208	7-25-23
9. Connie A. Kramer	2114 W. 79th St., P.V., KS 66208	25 July 2023
10. SCOTT DOUGAN	8301 BEAR LN PVKS 66207	7/25/23
11. Peter Gray McMeigle	6503 Granada Dr PVKS 66208	7/25/23
12. Carolyn L. Beauchamp	9105 Catalina PV, KS 66208	7/25/23
13. LISA VALENTI LEFKOVITZ	9230 Rosewood PV, KS. 66207	7/25/23
14. Katherine H. Morrison	8221 Rosewood Ln. P.V., KS 66208	7/25/23
15. John A. Morrison Jr.	822 Rosewood Ln P.V., KS 66208	7-25-23
16. Brandon J. Grizzle	7710 Canterbury St. PV KS 66208	7/25/23
17. ANNE MICHELE EPSTEIN	8317 JUNIPER LN PV KS 66207	7/25/23
18. August Hill	9510 Bucher Vista 66207	7/25/23
19. Davis Morrison	8221 Rosewood Lane. P.V., KS. 66208	7/25/23

EXHIBIT D

20. GARY BRAN BRUCE ~~DR BR~~ 5724 W. 81ST TERR PV, KS 66208 7/25/23
21. JUDY L SIMON ~~John~~ 8108 JUNIPER DR PV, KS 66208 7/25/23
22. Gary D Beachcamp 9105 Catalina P.V. KS 66207 7/25/23
23. METANIRI STAMOS ~~Elan Stamos~~ 8831 ALHAMBRA ST, PV, KS 66207 7/25/23
24. ADRIAN THOMAS ~~in DEAN~~ ~~8888 ROSEWOOD DR~~ PV, KS 66207
25. Monica J. Simoneau ~~Uwual Simoneau~~ 1501 W. 87th Terr. PV. KS 66207 7-25-23
26. Megan J. Ochs ~~Mym Ochs~~ 4700 W. 94th St. PV KS 66207 7-25-23
27. GEORGE F STERMES ~~8831 Alhambra~~ PV, KS 66207
28. Robert Melvin Klein ~~Robert Melvin Klein~~ 4307 West 94th Terr, PV KS 66207 7/25/23
29. Kerry James Williams ~~7425 Belinder Ave.~~ PV 66208 7/25/23
30. ~~Heather Wong~~ ~~8017~~ ~~66208~~
31. Heather Gagnon Wong ~~Heather Gagnon Wong~~ 8017 Sniper Dr. PV KS 66208 07-25-2023
32. Dawn A. Fiscus ~~5911 W 91st~~ PV KS 66208 7-25-23
33. Margaret Hofmeister ~~4924 W 87th St~~ ~~Prayer Village, KS 66207~~
34. Carrie M Murray ~~8888 Rosewood Dr.~~ PV, KS 66207 7/25/23
35. Matthew A. Moeder ~~8220 Rosewood Ln~~ PV, KS 66208 7/25/23
36. Valerie Lynn Moeder ~~8220 Rosewood Ln~~ PV, KS 66208 7/25/23
37. Lindsay Fleary ~~8200 Rosewood Ln~~ PV, KS 66208 7/25/23
38. Paul J Ramicke ~~4411 W. 77th Pl~~ PV, KS 66208 7/25/23
39. Mary Ellen Moch ~~5215 West Terr~~ PV KS 66202 7/27/23

EXHIBIT
D

- 40. Terri L. Bachtel Jerry K. Bachtel V302 W. 82nd Ter. PV, KS 66208 7/25/23
- 41. Douglas E. BACHTEL Douglas E. Bachtel 4302 W. 82nd Ter. PV, KS 66208 7/25/23
- 42. Gregory Dean Moch Gregory Dean Moch 5215 W. 65th Ter. PV, KS 66202 7/27/23
- 43. Margaret A. Hartman Margaret A. Hartman 5300 W. 65th Place, Prairie Village, KS 66202 7/27/23
- 44. Curtis P. Hartman Curtis P. Hartman 5300 W. 65th Place, Prairie Village, KS 66202 7/27/23
- 45. Katherine Marie Reuter Katherine Marie Reuter 5309 W. 65th Pl. Prairie Village, KS 66202 7/27/23
- 46. Karen G. Dees Karen G. Dees 5212 W. 65th Ter. Prairie Village, KS 66202 7/27/23
- 47. Donald C. Birchler Donald C. Birchler 5417 W. 65th Ter. Prairie Village, KS 66202 7/27/23
- 48. Nancy Louise McDonnell Nancy Louise McDonnell 5352 W. 65th Pl. PV, KS 66202 7/27/23
- 49. Arthur McDonnell III Arthur McDonnell III 5352 W. 65th Pl. PV, KS 66202 7/27/23
- 50. Michael Sterling Reuter Michael Sterling Reuter 5309 W. 65th Ter. PV, KS 66202 7/27/2023
- 51. Jessica Kathleen Lynn Jessica Kathleen Lynn 5211 W. 65th Pl. PV, KS 66202 7/27/2023
- 52. Zebulon E. Lynn Zebulon E. Lynn 5211 W. 65th Pl. PV, KS 66202 7/27/2023
- 53. ROBERT A. KROHN Robert A. Krohn 5416 W. 65th Pl. PV, KS 66202 7/27/2023
- 54. Mary Davis Krohn Mary Davis Krohn 5416 W. 65th Pl. PV, KS 66202 7/27/2023
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State of Kansas ss:
County of Johnson

I am the circulator of this petition, I believe the statements therein, and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon. I am a U.S. citizen, at least 18 years of age, have not been convicted of a felony, and agree to submit to the jurisdiction of the State of Kansas, including its agencies, political subdivisions and election officials for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

Sharon Mochel
(Signature of circulator)
7921 Forestawn Pkwy #566208
(Circulator's residence address)

Subscribed and sworn to before me this 18th day of July, 2023.
Cary Lea Baumann
[Signature of Notary Public]

My Commission Expires: 12-9-2026

Notary Public SEAL



JOHNSON COUNTY
KANSAS
Legal Department

MARY BUHL
ASSISTANT COUNTY COUNSELOR
(913) 715-1900
MARY.BUHL@JOCOGOV.ORG

rsharp@midwest-law.com

May 1, 2023

SENT BY U.S. MAIL AND ELECTRONICALLY

Rex A. Sharp
Sharp Law
4820 W. 75th Street
Prairie Village, KS 66208

Re: Review of Petition Forms Submitted on April 25, 2023

Dear Mr. Sharp:

This office received your cover letter and five petition forms on Tuesday, April 25, 2023. Your cover letter and the petition forms were hand delivered to the office. Your letter lists the five petition forms as: Initiative Regarding Rezoning, Initiative Regarding Rental Safety, Initiative Regarding Term Limits, For Abandonment of the Mayor-Council Form of Government, and For Adoption of Mayor-Council-Manager Form of Government.

As before, I have reviewed the petition forms for County Counselor Peg Trent. The Johnson County District Attorney's Office has also reviewed the petition forms. You have submitted five forms, although we approved, with caveats, the form of the question for some on previous submissions. Therefore, we are treating these as new petition forms. The petition forms differ from each other, in part, and differ from previous submissions; therefore, we will address each petition form individually.

K.S.A. 25-3601, et seq., requires that a copy of a petition be submitted to the county counselor for an opinion as the legality of the form of the question, and our opinion is limited to that issue. In our review of your petition question form, we have considered certain legal authority, including K.S.A. 25-3601, et seq., K.S.A. 25-620, K.S.A. 12-184 et seq., K.S.A. 12-3013, K.S.A. 12-1039, et seq., and K.S.A. 12-10a01, et seq.

Kansas law provides for the determination of the sufficiency of the substantive portions of the petition, which requires the exercise of discretionary judgment, as the responsibility of the

governing body of the public entity to which the petition is addressed. Accordingly, the sufficiency of the petition and of the questions stated, and form in which the question is presented, will be determined by the City of Prairie Village. However, a letter from this office that approves the legality of the form of the question would give a rebuttable presumption that the form of the question complies with the requirements of K.S.A. 25-3601, et seq.

I. Initiative Regarding Rezoning:

As noted above, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply."

Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, et seq., the provisions of the more specific statute shall control.

This petition form states a request that the City of Prairie Village pass an ordinance and references an ordinance set forth above the remaining petition form.

K.S.A. 12-3013 (b) states that "[e]ach proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you have submitted presents an ordinance preceded by the words "[s]hall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented in this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not provide an opinion as to whether the petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate, including whether Kansas statutes delegate rezoning issues to a governing body.

In addition, we offer the following comments for your consideration. The petition form adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. K.S.A. 25-3602(b) and K.S.A. 12-3013. Some of the "Whereas" clauses seem to be in incorrect order. The circulator's recital appears to be missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we again recommend careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

II. Initiative Regarding Rental Safety:

As previously stated, K.S.A. 25-3601 (a) requires that "Subject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

This petition form states a request that the City of Prairie Village pass an ordinance and references an ordinance set forth above the remaining petition form.

K.S.A. 12-3013 (b) states that "[e]ach proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you have submitted presents an ordinance preceded by the words "Shall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented in this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not offer an opinion as to whether the petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate.

In addition, we offer the following comments for your consideration. The petition adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. The circulator's recital appears to be missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

III. Initiative Regarding Term Limits:

As before, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply."

Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

K.S.A. 12-3013(b) states that "Each proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you submitted presents an ordinance preceded by the words "Shall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented on this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not offer an opinion as to whether your petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate.

In addition, we offer the following comments for your consideration. The petition adds certain language that either does not match statutory language or is in addition to required statutory language. The form does not contain a request to the governing body. K.S.A. 12-3013(a). The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. The heading for the address does not reference the statutory language indicating a residence street and number. K.S.A. 25-3602(b) and K.S.A. 12-3013. The circulator's recital is missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

IV. For Abandonment of the Mayor-Council Form of Government:

Again, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

The title to this petition form states the purpose is to vote on the abandonment of the "Mayor-Council" form of government. The petition form cites K.S.A. 12-184 as its authority. It is our understanding that the City of Prairie Village is a mayor council form of government. K.S.A. 12-184b and, by reference, K.S.A. 12-184, permits the certification of a petition requesting the submission of a question to the voters. K.S.A. 12-184(a). A petition would need to comply with K.S.A. 25-3601, et seq.

K.S.A. 25-3602 (b)(1) requires the petition to "...[s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601" If the statutory authorization provided different direction, the more specific statute would govern; however, we do not see that in this instance. K.S.A. 25-620 requires that the language "Shall the following be adopted?" precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, we do not believe the form of the question complies with statutory requirements.

In addition to this issue, we add these caveats. K.S.A. 12-184b(b) states, in part: "Any city which has operated for four or more years under a form of government may abandon such form and adopt a different form of government." We believe that Prairie Village has operated for more than four years under its current form of government; however, if it has not, our opinion would change because K.S.A. 12-184b and K.S.A. 12-184 would not provide the authority for this petition. Also, please note that we do not offer an opinion as to whether the petition or ordinance you have submitted is in proper form, and whether the statements made in the ordinance are accurate.

The following comments are for your consideration. Your petition adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. Finally, this format leaves the possibility of an election result in which one of the last two petition forms submitted (IV and V), passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

V. For Adoption of the Mayor-Council-Manager Form of Government:

K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601, et seq., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

The title to this petition form states the purpose is to vote on the adoption of the "Mayor-Council Manager" form of government. The petition form cites K.S.A. 12-1030 as authority its authority.

K.S.A. 25-3602 (b)(1) requires the petition to "...[s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601" If the statutory authorization provides different direction, the more specific statute would govern. K.S.A. 12-1039(c) provides "the form of the ballot." However, K.S.A. 12-1039(a) also provides that the petition shall conform to requirements of Article 36 of Chapter 25. K.S.A. 25-3602(b)(1) requires that the question shall comply with K.S.A. 25-620, which requires that the language "Shall the following be adopted?" precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, we do not believe the form of the question complies with statutory requirements.

In addition to this issue, we add these caveats. We do not offer an opinion as to whether the petition or ordinance you have submitted is in proper form, and whether the statements made in the ordinance are accurate.

We offer the following comments for your consideration. The petition form adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. Finally, this format leaves the possibility of an election result in which one of the last two petition forms submitted (IV and V), passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.

This opinion is limited to the form of the question, and we again recommend careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we again caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

Sincerely,


Mary Martin Buhl
Assistant County Counselor

Cc: Shawn Minihan, Asst. District Attorney
Jacob Gontesky, Asst. District Attorney
Peg Trent, Chief Counsel, Johnson County
David E. Waters, City Attorney, Prairie Village

August 14, 2023

Mr. Adam Geffert
City Clerk, City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

RE: An Ordinance regarding Limiting Rezoning that would Allow Accessory Dwelling Units or other Dwellings for more than One Family to Reside on a Lot in a Single-Family Residential Zoning District (the "Rezoning Petition").

The Johnson County Election Office has completed petition signature verification, in compliance with Kansas Election Standards Chapter V verification chart, for a petition regarding a zoning ordinance for Prairie Village, submitted by the Prairie Village city attorney on August 1, 2023. I make no determination as to the legal sufficiency of the petition.

Signatures submitted: **3,709**

Signatures required per K.S.A. 12-3013 ("...electors equal in number to at least 25% in cities of the first class...of the electors who voted at the last preceding regular city election"): **3,130**

Total accepted signatures: **3,213**

We will need the City's written confirmation of: 1) Whether the petition is valid; 2) if valid and an election is called, the question for the ballot; and 3) the date requested for the election.

Please feel free to contact us if you have any questions or concerns.

Sincerely,



Frederick L. Sherman
Johnson County Election Commissioner

cc: David Waters, Prairie Village City Attorney
Wes Jordan, Prairie Village City Administrator
Rex Sharp, legal counsel for petitioners

EXHIBIT
F

DECLARATION OF CHRIS BREWSTER

1. My name is Chris Brewster. I am a Vice President of Multistudio, a firm based in Kansas City that was formerly known as Gould Evans. I have a Bachelor of Science degree in Business Administration/Marketing from the University of Delaware-Newark, and I received a law degree (J.D.) from the University of Missouri-Kansas City in 1998.

2. For the past 22 years, my work has focused on consulting with municipalities on planning and zoning matters. I and members of my staff serve as the planning professionals for several cities, including the City of Prairie Village, that do not have employ professional planners of their own. In that role, we evaluate plans for compliance with applicable codes, work with those who seek approvals to build in those cities, make recommendations to the Planning Commissions and governing bodies, and assist with updates to their zoning ordinances, among other tasks.

3. I also oversee projects involving municipalities that seek to fully rewrite their zoning ordinances. In those cases, we work with local leaders to draft their zoning ordinances to account for outdated language and modifications required due to changing conditions in the jurisdiction. In doing this work, we strive to eliminate ambiguities in zoning ordinances and ensure that they are coherent and internally consistent. This experience has given me insights into the problems that can arise when one part of a zoning ordinance is amended without accounting for its impact on other parts of the city's zoning ordinance and regulations. In my experience, this work requires special expertise and knowledge about the conditions in a jurisdiction so that the knock-on effects of an amendment to one section might affect other parts of the ordinance.

4. I was asked by the City Administrator for Prairie Village to review the revisions to the Prairie Village zoning ordinances that have been proposed through a petition drive. Based on my experience in drafting and revising zoning ordinances and my knowledge of the Prairie Village

EXHIBIT G

zoning ordinances, I prepared the memorandum attached to this declaration in which I outline the problems that proposed ordinance would create. I believe that my memorandum accurately portrays the problems and unintended consequences of the proposed ordinance, and I adopt that memorandum in this declaration to express my opinions about the proposed ordinance.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 16, 2023.


Chris Brewster

EXHIBIT
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OP 3553119 1

Memorandum

Project	City of Prairie Village	To	Wes Jordan, City Administrator Nickie Lee, Deputy City Administrator
Subject	Draft Zoning Ordinance dated August 1, 2023	From	Chris Brewster, Multistuido Contract City Planner
Date	August 11, 2023	CC	

Introduction

This memo provides a planning analysis of the draft ordinance “limiting rezoning that would allow accessory dwelling units,” dated August 1, 2023. It does not include any legal review of the proposed ordinance and whether incorporating the proposed changes into the ordinance would be valid if they were proposed to be added to the Prairie Village Zoning Ordinance.

The draft ordinance includes three elements:

- (1) “Whereas” clauses which are supposed to provide clear and accurate information on the policy background and motivations for an ordinance;
- (2) A proposed definition of “rezoning”; and
- (3) A new Section 19.52.006 that would add new procedures for specific circumstances related to the proposed rezoning definition.”

This review only considers the latter two elements. However, it is important to first consider the City’s current zoning ordinance in the context of typical professional planning practices.

I. Planning & Zoning Generally

It is commonly understood in professional planning and zoning practices that there are two distinct types of amendments to zoning ordinances:

- Rezoning – which is a change to the zone district or designation of a particular property (i.e. a property-specific zoning map change); and
- Zoning Ordinance Updates – a change to the standards of the zoning ordinance which may be applied city-wide, district-wide, or on a topic-specific basis.

Each of these processes has statutory mandates for public notice, public process, and review criteria.

Most zoning codes do not define what constitutes rezoning vs. what constitutes a generally applicable update – likely because the above is so widely understood among practicing planners and those working with development codes. However, it is common for the procedures of a local zoning ordinance to make distinctions between the two processes because they have different impacts and raise different planning and policy issues.

The Prairie Village Zoning Ordinance addresses amendments to the zoning ordinance in Chapter 19.52 Procedural Provisions, but largely mirrors the Kansas Statutes¹ and primarily draws a distinction between the two types of zoning amendments by who can apply for each type of amendment, and the notice and protest petitions that apply to property-specific map changes. Therefore, it allows only the Governing

¹ KSA 12-757(a)



Body or Planning Commission to initiate general zoning ordinance updates but allows each of these bodies or also the property owner to initiate a property-specific map changes.²

This is typical of most city zoning ordinances and reflects three fundamental planning principles:

- (1) The Planning Commission is an appointed body charged with making recommendations on any zoning matter and serves as an important advisory group and/or check against elected officials. In this role they rely heavily on the comprehensive plan for the city which guides all decisions, and other public planning processes that the Commission is involved in.
- (2) The Governing Body is the elected legislative body and is charged with adopting any law – whether it is a generally applicable law or a property-specific legislative change in how laws apply to that property.
- (3) Property owners generally cannot propose generally applicable changes to zoning ordinances but can propose a change applicable to their own property.

Because these elements are well-understood throughout the planning and zoning profession, and are similar among most states, it is typically not necessary to define “rezoning” in a zoning ordinance, other than through specific procedures and criteria – as does the Prairie Village Zoning Ordinance.

Zoning ordinances often add two additional property specific procedures – planned zoning and property-or use-specific special reviews.

Development proposals that are not specifically enabled by general zoning district standards can be approved through “planned zoning” in many jurisdictions. This relies on a property-specific development plan or a larger-scale master plan to accompany development. Whether done in conjunction with changing the base zoning (i.e. from R-1 to R-3-P) or not changing the base zoning (i.e. from R-1 to R-1-P) this action is typically considered a map amendment and requires all of the process and criteria of a map amendment. The Prairie Village Zoning Ordinance includes this tool in Chapter 24 and it utilizes the zoning map amendment process.³

Some specific uses or development activities that may not be appropriate universally throughout the district or which may require other case-specific review to ensure they are consistent with the district can be allowed by special review. This typically requires special procedures and review criteria, but is not considered a change to the mapped zone district because all property in the district are eligible to make a similar request. This tool allows specific standards, limitations, or criteria to be built into the ordinance for that issue or application. Enabling these types of uses or projects may vary by jurisdiction – either through some abbreviated but still higher level of review and scrutiny, or by utilizing a similar process and criteria as rezoning, plus the additional use-specific criteria. The Prairie Village Zoning Ordinance accounts for both of these processes – a more abbreviated but elevated review of some minor or more common things through the Conditional Use Permit process, and a higher-level review and scrutiny through the Special Use Permit process. The Conditional Use Permit uses the established site plan review process (Planning Commission review/decision)⁴ and the Special Use Permit uses the established rezoning process (Planning Commission review/public hearing/ recommendation; City Council decision), although it is not considered a zoning map change.⁵

The Prairie Village Zoning Ordinance has a comprehensive set of application and review procedures to address a wide variety of planning issues. The range of existing procedures cover every combination of staff, planning commission, and city council review and decision, and the current structure of the zoning ordinance has the ability to steer any particular application or issue to the appropriate level of review.

II. Draft Ordinance Review

² Prairie Village Zoning Ordinance, Section 19.52.005.

³ Prairie Village Zoning Ordinance, Chapter 19.24

⁴ Prairie Village Zoning Ordinance, Chapter 19.30

⁵ Prairie Village Zoning Ordinance, Chapter 19.28



A. ***Proposed Rezoning Definition***

As indicated above, a definition of “rezoning” is typically not necessary in a zoning ordinance as the principle is simple and widely understood. The draft definition of rezoning appears to be an attempt to broaden what is commonly understood as rezoning, to either include more things that would be subject to comprehensive review that accompanies rezoning and/or increase the procedures and scrutiny of specific actions. However, the definition is unclear and is both overinclusive and underinclusive. This can cause confusion with processes that apply to routine planning and zoning matters and other things that are already well-established in the ordinance.

The specific concerns with the rezoning definition are as follows and these impact the analysis in the subsequent sections of this memo:

- It only defines rezoning as a change from a more restrictive zone to less restrictive zones. Many other changes are also considered changes to the zoning map and are required to follow the rezoning process, but those are not included in this definition.
- The example clause (“such as”) implies that changes that are not map changes could also be considered rezoning, so it is broader than what the definition initially states (i.e. a change of zone). Therefore, the definition may include many other things not intended by this ordinance or which are interpreted as being “less restrictive,” and this will unnecessarily complicate updates to city-wide, district-wide, or topic-specific standards.
- If the intent is to include any zoning updates that are “less restrictive” as “rezoning,” this will call into question changes where it is not clear if it is more restrictive, less restrictive, or neutral. This adds unnecessary confusion about which process certain applications should follow and could potentially subject things to multiple competing processes and criteria that are already included in the zoning ordinance when considering the ordinance in its entirety.
- The definition uses the R-2 district as an example, but the substantive provisions of the draft ordinance (added procedure section discussed below) includes only changes in the R-1 district. This creates an internal conflict within the draft ordinance.
- The definition uses two terms that are already defined for specific use elsewhere in the ordinance – “family” and “dwelling.” It is not clear whether those definitions were considered when drafting this proposed rezoning definition, however at a minimum using those terms as currently proposed adds confusion to the proposed definition of “rezoning.”⁶
- The title of the ordinance indicates that one of the specific issues is to limit accessory dwelling units. But that term is not defined, this term is not included as an example in the definition of rezoning, and it is not mentioned at all in the proposed ordinance. Additionally, the zoning ordinance already allows the similar concept of “accessory living quarters.” Each of these factors serves as a further source of confusion, and calls into question whether the draft ordinance even serves its stated objective in the title.

A definition of “rezoning” is typically not needed in a zoning ordinance due to commonly understood planning practices, nor is it necessary based on the current procedures included in the Prairie Village Zoning Ordinance. The proposed definition appears to be an attempt to broaden the definition beyond commonly understood planning practices but creates confusion with things already established in the zoning ordinance. The objectives for broadening the definition may be better achieved by other mechanisms (see analysis below) and this would avoid the confusion and administrative difficulties that could come from an unconventional and contrived definition of rezoning. If the definition were

⁶ In general, the definition of “family” comes under higher legal scrutiny when used as a regulating tool. There is a trend in planning and zoning to avoid using this term in zoning ordinances due to legal concerns and practical enforcement issues, and shift to the term “household.” The Prairie Village Zoning Ordinance still uses the term family, but further reliance on this term should be avoided, particularly in new ordinances that may be increasing the restrictions on housing occupancy. The term “dwelling” in the proposed definition appears to be used as a verb (paired with and redundant of “living”); however, in the Prairie Village zoning ordinance it is a noun describing a specific configuration and use of a building. It should not be included in this definition.

appropriately targeted to include any map or land use changes that elevate the intensity of development, it would need to be revised to eliminate the above sources of confusion and be more precise and specific.

B. ***Proposed Procedure Section***

The draft ordinance proposes a new Section of 19.52.006 in Chapter 52. Chapter 52, Procedural Provisions deals with both kinds of zoning amendments – map changes and zoning ordinance updates, and the differences between the two are included within each of the subsections in the existing ordinance. The draft section includes some structural or organizational flaws in the context of the rest of Chapter 52:

- The title of the section is “Rezoning by Governing Body,” but the content of the section uses “governing body and/or planning commission.” As noted above, the Kansas Statutes and Prairie Village Zoning Ordinance authorize the Planning Commission to initiate zoning updates or map changes.
- The initial sub-section a. appears to limit the applicability of the section to the R-1 zone districts (R-1-A or B), but then the rest of the sections do not indicate a similar limitation. It is not clear whether subsection a. controls the rest of the sections b. through d. or whether they are each independent sections and b. through d. would apply to all zone districts.
- The draft provisions are redundant and slightly conflicting with other sections of Chapter 52. The objectives of proposed Section 19.52.006 would likely be better accomplished with some simple amendments to language in Section 19.52.005, Application, and it would eliminate the redundancy, conflicts, and interpretation issues that the proposed draft causes.

The potential effects of each of the subsections is covered below.

19.52.006.a. This subsection presents the following issues and concerns:

- Regardless of the policy or substantive issues of this subsection, it uses poor sentence structure mixing permissive and limiting language. For ordinances, a more direct statement of the limitation should be used if that is what is intended.
- Limiting considerations to “only one lot at a time” could constrain future actions by the city. Many necessary actions to either change the zoning map in R-1 districts or update standards applicable to R-1 districts will become impractical or administratively burdensome. This is primarily due to the overinclusive or at least vague definition of what could be considered “rezoning.” The focus on single property is further indication that the draft ordinance is focused on one specific issue, yet the underinclusive nature of the definition of rezoning calls into question whether the draft ordinance would even serve its stated intent.
- This section only applies to R-1 districts, but the definition of rezoning applies city wide and it uses the R-2 district as an example, which seems unnecessary given the limited nature of the substantive portions of the ordinance. The underinclusive nature of the definition of rezoning and the targeted nature of this section creates confusion in many other sections of the ordinance.

19.52.006.b. This subsection has no effect. It is redundant of other existing sections since it only provides a cross reference, and essentially amounts to saying “the required procedure is ... the procedures required in other sections.” Generally, circular cross-references like this or restatements of things that are already required in other sections should be avoided unless they add clarity to something that could easily be omitted and confused (and even then a more careful ordinance structure should be considered to avoid resorting to the cross-reference approach.) In this case the cross reference is to subsections in the same Chapter and immediately following this Section, so it is unnecessary even as a clarification (and despite having no actual effect.) If special zoning procedures for zoning actions initiated by City Council or Planning Commission in the R-1 district were warranted, it should be better integrated into all of the generally applicable standards and procedures included in Chapter 52.

19.52.006.c. This subsection is circular and redundant, adding complexity and confusion to the ordinance. The specific effect of the section is to use the special use permit posting requirement (Section 19.28.025) for “rezoning,” but then substitute two words in that notice. Section

19.52.006.b – immediately above this section – already refers to a number of other existing rezoning sections, including 19.52.025 (Posting of Property for rezoning). These sections are word-for-word the same, except for 19.52.025 already uses the wording that proposed 19.52.006.c substitutes.

19.52.006.d This section also refers to existing sections on rezoning criteria, so in general does not add anything substantive to affect the implementation of planning and zoning policies or rezoning applications. There is the addition requiring “clear and convincing evidence” which is an apparent attempt to raise the standard of review or scrutiny of these decisions. However, the existing sections that this subsection refers to include consideration of a wide range of topics, from the comprehensive plan and character of the area to the conditions of property and its adjacency. Further, for both sections referred to, it is well established (in the ordinance, in practice, and by KS statutes) that these factors are to be weighed on balance and no one factor is controlling of a decisions, and in some cases some of the factors may not be applicable or relevant. Within this context, it is difficult to see how adding “clear and convincing” to the requirements would have any practical effect on the review and decisions. Therefore, similar to subsections b. and c., this section does not add any planning or policy substance to the existing standards but could serve as another source of complexity and confusion in interpreting and administering the zoning ordinance.

C. ***Assumed Objectives and Unintended Outcomes***

Assuming the technical deficiencies and the vague and overly broad / under inclusive definition of rezoning could be corrected, it may be assumed that the intent of the draft ordinance is more limited. The following points are noted:

- The title of the ordinance claims to be limiting “accessory dwelling units;”
- The operative added procedure (proposed 19.52.006.a) reference lot specific applications and only the R-1 districts, and implies only property specific reviews are appropriate;
- Two separate sections on notice and criteria refer to existing special use permit provisions, indicating a desire to analyze more property-specific issues on a case-by-case basis.

From these factors it can be inferred that one possible rational objective of this ordinance would be to put higher scrutiny and a case-by-case analysis on accessory dwelling units, even though the draft ordinance does not state that directly or clearly.

If that is the case, the objectives of this ordinance could be achieved in a far simpler way, and in a more effective way through the existing special use permit process, through any of the following:

- First, nothing could be changed and then the issue of detached accessory dwellings would stay as it is now – not allowed, and further not even enabled through some case-specific zoning process, which is implied by this ordinance.
- Alternatively, accessory dwelling units could be listed in the use table or accessory use sections as only allowed through special use permit review. This would accomplish all of the things the draft ordinance proposes in terms of notice, process, application limits, and decision criteria through a simple addition to the ordinance.
- Further, this approach would allow issue or topic specific limits to be placed on accessory dwelling units where the proposed ordinance proposes none and leaves the consideration of “new dwelling units” very open ended.
- Lastly, it would eliminate the confusion caused by this ordinance, including the overbroad implications that other housing options beyond accessory dwelling units can also be proposed in a case-specific review if initiated by a property owner.

III. **Summary**

I would not recommend the city adopt the zoning amendments proposed in the draft ordinance if this were proposed as an official amendment to Prairie Village Zoning Ordinance. Primarily this is based on

technical deficiencies in the ordinance; however, there are some policy concerns that should be considered as well.

- A. *Internal Consistency and Zoning Ordinance Consistency.* The changes proposed in the draft ordinance do not have the entire zoning ordinance in view. It includes circular provisions, cross references that create conflicts or interpretation issues, and redundant provisions. It also has internal inconsistency within the draft itself. This type of confusion should not be added to the zoning ordinance and will make the ordinance more difficult to administer and interpret.
- B. *Overlap with Current Process.* The operative terms proposed to be added to Section 19.52.006 are duplicative of things already required by the Kansas Statutes and the Prairie Village Zoning ordinance. It does not add any process that is not now required by the zoning ordinance regarding notice and application, but also leaves out important steps in the ordinance and/or relies on cross-references for other steps. This adds additional complexity and confusion to the ordinance making it more difficult to administer and interpret. Further it seems to blur two distinct types of applications that have different criteria – a property-specific special use permit, which is initiated by the property owner; and a property specific rezoning. Although these follow a similar process with regard to notice and public review, they have different criteria. Based on the title and stated intent of the draft ordinance, each of these distinct options should be more thoroughly considered based on the procedures clearly outlined for each in the existing zoning ordinance.
- C. *Policy Concerns.* There are three possible policy outcomes that the petition could affect, if the above technical deficiencies are corrected:
 1. *Effect on Generally Applicable Regulations.* If the intent is to require any city-wide, district-wide, or topic-specific change that makes the standards “less restrictive” to require the property owner to apply – even if limited to R-1 districts, I would not recommend changes proposed in the draft ordinance. This could place a high barrier on the city’s obligation to consider zoning amendments that further the goals and objectives of the plan, including those that are more restrictive or less restrictive.⁷ Further, some changes to development standards could be debatable as to whether they are less restrictive or more restrictive, depending on the topic, depending on the standard, and depending on the perspective of parties involved. This sort of confusion in the term “rezoning” is unnecessary as there are already processes, criteria, and public involvement required to reconcile issues and concerns with these types of zoning updates.
 2. *Effect on Rezoning (map changes).* If the intent is to require any property specific map change to first require the applicant to sign off, I do not have a professional planning opinion. This is a policy issue. Although it is common for states to give the authority to the Planning Commission and Governing Body to initiate rezoning, in general practice it is not often exercised, and most rezoning applications are already initiated by property owners. In our time working as Prairie Village’s planning consultant, there have not been any city-initiated rezonings – all map changes have been initiated by a property owner. I do not know if there are legal issues regarding a local ordinance limiting the statutory authority of a Planning Commission or Governing Body to initiate rezonings. There are planning implications, where this could constrain the city’s ability to act absent a property owner’s concurrence. However, absent any legal issues associated with this, I believe this is more of a policy issue than a planning issue.
 3. *Effect on Issue-specific or Property-specific Development.* If the intent is to require higher-scrutiny, greater public input and notice, or owner-initiated applications only for certain types of applications in the R-1 district (or R-2; or any zone district), I would not recommend the changes proposed in the draft ordinance. The existing special use

⁷ KSA 12-757(a)

multistudio

permit process is more appropriate for this, and the operative provisions of the draft ordinance in Section 19.52.006 do not add anything not already required by the special use permit process:⁸ The special use permit process requires an application by the property owner only; it requires notice to surrounding property owners; it requires a public hearing at the Planning Commission and a decision by the City Council. In addition, the special use permit process does three crucial things the draft ordinance does not do – it limits what can potentially be proposed by a special use permit by requiring it to be specifically listed in the ordinance; (2) it can have additional development and use-specific criteria that have to be considered that are not considered in general zoning amendments (whether rezoning or zoning updates); and (3) a special use permit can require periodic review and renewal for ongoing compliance or enforcement, or be revoked by the City. All of these items can be identified through rational policy discussions of the Planning Commission and Governing Body, through the ordinary course of public review and consideration of planning and zoning updates.

In conclusion, I think the draft ordinance is technically flawed and will cause unnecessary interpretation and administration issues; the assumed objectives of the draft ordinance may not be achieved and could be more easily, clearly, and effectively accomplished by procedures already in the zoning ordinance; and the draft ordinance raises other planning and policy issues that have not been fully considered by the Planning Commission or Governing Body.

⁸ Prairie Village Zoning Ordinance Chapter 19.28.

PETITION FOR AN ELECTION OF THE CITY OF PRAIRIE VILLAGE, KANSAS TO VOTE ON THE ABANDONMENT OF THE MAYOR-COUNCIL FORM OF GOVERNMENT

TO THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

The City of Prairie Village shall submit the following question for ballot:

Shall the City of Prairie Village, Kansas abandon the mayor-council form of government?

Yes No

The electors (voters) of Prairie Village, Kansas signed below request that the governing body submit the question above to a vote of the Prairie Village electorate pursuant to K.S.A. 12-184 to abandon the mayor-council (strong mayor) form of government.

Petition Signatures

I have personally signed this Petition. I am a registered elector of the state of Kansas and of Prairie Village, Kansas and my residence address is correctly written after my name.

<u>Printed Name/Signature</u>	<u>Residence Address (Street and Number)/PV/Zip Code</u>	<u>Date of Signing</u>
Melody C. Kresman	2711 W 78th St, PV, KS 66208	6/9/23
Jessica Lea Richardson	7620 Juniper Dr. PV, KS 66208	6/13/2023
William Bowling Noyce	7620 Juniper Dr. PV, KS 66208	6/8/2023
Robert Alon Weber	6832 Ganada Rd PV, KS 66208	6/15/2023
Esther Eiken-Hover	3608 W 71st PV, KS 66208	6/21/23
Marsha S. Chezek	Manhasset, Cheyenne 7119 Buena Vista P.V. KS 66208	6/21/23
Donna F. Alban	7221 Mission	6-21-23
STEPHEN H. ZANONE	7420 Villavice Dr F.V.	6-21-23

- 9. Julia A. Zanone Julia A. Zanone 7420 Hilltop Dr. 66208 6-21-23
- 10. Anna Grossman Anna Grossman 3600 W 73rd St PV KS 66208 6-21-23
- 11. Patrick Shaw Mellie's Patrick Shaw 3412 W 74th St PV KS 66208 6-21-23

- 12. _____
- 13. _____
- 14. _____
- 15. _____
- 16. _____
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- 27. _____
- 28. _____
- 29. _____

August 14, 2023

Mr. Adam Geffert
City Clerk, City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

RE: Petition for an Election of the City of Prairie Village, Kansas to Vote on the Abandonment of the Mayor-Council Form of Government (the "Mayor-Council Abandonment Petition").

The Johnson County Election Office has completed petition signature verification, in compliance with Kansas Election Standards Chapter V verification chart, for a petition to abandon the form of government for Prairie Village, submitted by Rex Sharp on August 1, 2023. I make no determination as to the legal sufficiency of the petition.

Signatures submitted: **2,174**

Signatures required per K.S.A. 12-184 ("...qualified electors of the city equal in number to not less than ten percent (10%) of the qualified electors of the city...."): **1,945**

Total signatures accepted and certified: **2,010**

We will need the City's written confirmation of: 1) Whether the petition is valid; 2) if valid and an election is called, the question for the ballot; and 3) the date requested for the election.

Please feel free to contact us if you have any questions or concerns.

Sincerely,



Frederick L. Sherman
Johnson County Election Commissioner

cc: David Waters, Prairie Village City Attorney
Wes Jordan, Prairie Village City Administrator
Rex Sharp, legal counsel for petitioners

EXHIBIT

I

PETITION FOR AN ELECTION OF THE CITY OF PRAIRIE VILLAGE, KANSAS TO VOTE ON THE ADOPTION OF THE MAYOR-COUNCIL MANAGER FORM OF GOVERNMENT

TO THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

The City of Prairie Village shall submit the following question for ballot:

Shall the City of Prairie Village, Kansas adopt the mayor-council manager form of government and become a city operating under such form of government?

Yes No

Pursuant to K.S.A. 12-1039(b), the membership of the Prairie Village City Council under the new mayor-council manager form of government shall be one member from each of the six wards plus an at large Mayor, all with staggered terms as follows: Only the 2023 elected City Council member from each ward shall continue to serve in the new City Council along with the currently elected at large Mayor. Those 2023 elected City Council members from Wards 1, 2, and 3 shall serve four year terms, while those 2023 elected City Council members from Wards 4, 5, and 6 as well as the current at large Mayor shall serve two year terms. Thereafter, all wards will elect just one member to the City Council to serve four year terms.

The electors (voters) of Prairie Village, Kansas signed below request that the governing body submit the above question, and terms of office, to the Prairie Village electorate pursuant to K.S.A. 12-1039 to adopt the mayor-council manager form of government.

Petition Signatures

I have personally signed this petition. I am a registered elector of the state of Kansas and of Prairie Village, Kansas and my residence address is correctly written after my name.

<u>Printed Name/Signature</u>	<u>Residence Address (Street and Number)/PV/Zip Code</u>	<u>Date of Signing</u>
1. <u>Melody C. Hersman / Melody Hersman</u>	<u>2711 W 18th St, PV, KS 66208</u>	<u>6/9/2023</u>
2. <u>Jessica Lea Richardson</u>	<u>7620 Juniper Dr. PVKS 66208</u>	<u>6/13/2023</u>
3. <u>William Browning Noye Walker</u>	<u>7620 Juniper Dr. PVKS 66208</u>	<u>6/13/2023</u>
4. <u>Robert Alan Weber</u>	<u>6832 Granada Rd PV KS 66208</u>	<u>6/15/2023</u>

	Name	Signature	Address	Date
5.				
6.	Eric Steinboer	<i>Eric Steinboer</i>	3608 W 71st Pk, KS	6/21/23
7.	Marsha S. Cheryl	<i>Marsha S. Cheryl</i>	9119 Buena Vista P.V., Mo	6/21/23
8.	Ronna E. Nolan	<i>Ronna E. Nolan</i>	7221 M. 22100 Rd	6-21-23
9.	STEADEN A. ZIMONE	<i>Steaden A. Zimone</i>	7420 vicinity Dr	6-21-23
10.	Julie A. Zimone	<i>Julie A. Zimone</i>	7200 Village Dr.	6-21-23
11.	Stevie Miller	<i>Stevie Miller</i>	3274 W 75th St	6-21-23
12.	Anna Corossman	<i>Anna Corossman</i>	3400 W 73rd Pk KS 66208	6-21-23
13.	Patrick Shawn Mellicer	<i>Patrick Shawn Mellicer</i>	3413 W 74th St Pk, Mo 64208	6-21-23
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August 14, 2023

Mr. Adam Geffert
City Clerk, City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

RE: Petition for an Election of the City of Prairie Village, Kansas to Vote on the Adoption of the Mayor-Council Manager Form of Government (the "Mayor-Council-Manager Adoption Petition").

The Johnson County Election Office has completed petition signature verification, in compliance with Kansas Election Standards Chapter V verification chart, for a petition to adopt a form of government for Prairie Village, submitted by Rex Sharp on August 1, 2023. I make no determination as to the legal sufficiency of the petition.

Signatures submitted: **2,176**

Signatures required per K.S.A. 12-1039 ("...signed by at least 10% of the qualified electors of the city..."): **1,945**

Total signatures accepted and certified: **2,042**

We will need the City's written confirmation of: 1) Whether the petition is valid; 2) if valid and an election is called, the question for the ballot; and 3) the date requested for the election.

Please feel free to contact us if you have any questions or concerns.

Sincerely,



Frederick L. Sherman
Johnson County Election Commissioner

cc: David Waters, Prairie Village City Attorney
Wes Jordan, Prairie Village City Administrator
Rex Sharp, legal counsel for petitioners

EXHIBIT
K

#2 Eliminate Mayor Strong go to Mayor - Council form of government

11/19

PETITION FOR AN ELECTION OF THE CITY OF PRAIRIE VILLAGE, KANSAS TO VOTE ON THE ADOPTION OF THE MAYOR-COUNCIL MANAGER FORM OF GOVERNMENT

TO THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

The City of Prairie Village shall submit the following question for ballot:

Shall the City of Prairie Village, Kansas adopt the mayor-council manager form of government and become a city operating under such form of government?

Yes No

Pursuant to K.S.A. 12-1039(b), the membership of the Prairie Village City Council under the new mayor-council manager form of government shall be one member from each of the six wards plus an at large Mayor, all with staggered terms as follows: Only the 2023 elected City Council member from each ward shall continue to serve in the new City Council along with the currently elected at large Mayor. Those 2023 elected City Council members from Wards 1, 2, and 3 shall serve four year terms, while those 2023 elected City Council members from Wards 4, 5, and 6 as well as the current at large Mayor shall serve two year terms. Thereafter, all wards will elect just one member to the City Council to serve four year terms.

The electors (voters) of Prairie Village, Kansas signed below request that the governing body submit the above question, and terms of office, to the Prairie Village electorate pursuant to K.S.A. 12-1039 to adopt the mayor-council manager form of government.

Petition Signatures

I have personally signed this petition. I am a registered elector of the state of Kansas and of Prairie Village, Kansas and my residence address is correctly written after my name.

<u>Printed Name/Signature</u>	<u>Residence Address (Street and Number)/PV/Zip Code</u>	<u>Date of Signing</u>
1. <u>TERRI BRUCE YENNER / TERRY BRUCE YENNER</u>	<u>7471 VILLAGE DR, PV KS 66208</u>	<u>5/6/23</u>
2. <u>Megan Doren Yunker / Megan Doren Yunker</u>	<u>7471 Village Dr PV, KS 66208</u>	<u>5/6/23</u>
3. <u>Rebecca Snodgrass / Rebecca Snodgrass</u>	<u>4807 Tomahawk PV KS 66208</u>	<u>5/6/23</u>
4. <u>Mark William Samuel / Mark William Samuel</u>	<u>4900 W. Grand St, PV, KS 66208</u>	<u>5/6/23</u>

EXHIBIT L

Printed Name
exactly as on
voter registration

Signature

Full Address: Street * number, P.V, zip code

Date of signing

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- 5. Seagary E Whit Allyson Seagary 4106 W 68th Ave P.V. 66208 May 4, 23
- 6. SUZANNE WOLTER Dudman D. Wolter 8129 Harbor Dr P.V.KS 66208 5/6/23
- 7. PAIGE WOLTER Craig Wolter 8129 Harbor Dr. P.V. KS 66208 5/6/23
- 8. Jason Nicholas Richards 101 E. W. 3402 W. 73rd Trc. P.V. KS 66208 5/6/23
- 9. JERRY WYNE Willy Wyne 69 Le Mans Court, P.V. KS 66208 5/6/23
- 10. GAISEL WILBY 19 Le Mans Ct. P.V. KS 66208 5/6/23
- 11. Melanie Ryan M Ryan 7209 Linden St. P.V. KS 66208 5/6/23
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State of Kansas ss:
County of Johnson

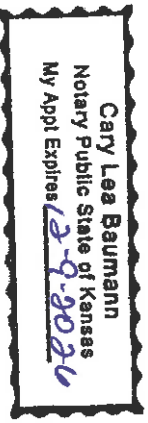
I am the circulator of this petition and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon. I am a U.S. citizen, at least 18 years of age, have not been convicted of a felony, and agree to submit to the jurisdiction of the State of Kansas, including its agencies, political subdivisions and election officials, for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

[Signature]
(Signature of circulator)
5009 W 70th St POKS 66208
(Circulator's residence address)

Subscribed and sworn to before me this 8th day of May, 2023.

[Signature of Notary Public] My Commission Expires: 12-9-2026

Notary Public SEAL



LFJ

EXHIBIT
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