

IN THE DISTRICT COURT OF SALINE COUNTY, KANSAS

CITY OF SALINA, KANSAS, a municipal corporation,)	
)	
Plaintiff,)	
v.)	Case No. _____
)	
KEVIN KORB,)	
)	
Defendant.)	
)	

(Pursuant to K.S.A. Chapter 60)

**PETITION FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff, the City of Salina, Kansas, (the “City”) by and through its attorneys, Jacob E. Peterson and Greg A. Bengtson of Clark, Mize & Linville, Chartered, and for its petition seeking declaratory judgment and injunctive relief, states as follows:

1. Jurisdiction is proper in this Court based on the facts set forth below.
2. Venue is proper in this Court, as the City is a municipal corporation located in Saline County, Kansas, and Defendant Korb is a resident of the City.
3. Defendant Korb may be served personally at his current address: 600 Upper Mill Heights Dr., Salina, Kansas 67401.
4. Defendant Korb circulated and collected several thousand signatures on a petition invoking K.S.A. 12-1303, K.S.A. 25-3601, and K.S.A. 25-3602 (the “Ordinance Petition”).
5. Those signatures have been certified by the Saline County Clerk and County Election Officer.
6. A certified copy of the Ordinance Petition was hand-delivered to the City Clerk by the Saline County Clerk and County Election Officer on August 9, 2021.

7. A complete, true and accurate reproduction of the terms of the Ordinance Petition is attached as Exhibit A.

8. Generally speaking, the statutes cited above permit valid proposed ordinances to become effective within the City either through the adoption of proposed ordinances by the governing body or through a successful election by the electors of the City. K.S.A. 12-3013.

9. The governing body of the City has declined to pass the ordinance proposed by the Ordinance Petition, but has submitted the matter to the Saline County Clerk to be placed upon the November general election ballot for reasons described in Resolution No. 21-7979, attached as Exhibit B.

10. The Ordinance Petition prepared by Mr. Korb is an attempt to enact an ordinance limiting the current and future authority of the governing body of the City of Salina to respond to “states of emergency declared at the County or State level,” and to cede such authority to Saline County.

11. The operative language of the proposed ordinance within the Ordinance Petition specifically provides:

The Governing Body of the City of Salina shall not impose any restrictions on businesses or citizens of the City of Salina on activities that are otherwise lawful in response to any state of emergency declared at the County or State level. Examples of restrictions include but are not limited to: Limitations on business capacity, Limitations on business hours, Forcing a business to close, Restricting what may be bought or sold, Restrictions on citizens leaving their residence, Restrictions on citizens being in public places, Curfews applying to citizens, Forced medical treatment of any kind such as mandatory vaccines or the mandatory wearing of face coverings or other medical protective equipment.

The wearing of face coverings or other medical protective equipment may not be required on any public [sic] owned property, such as parks and other

facilities operated by the City of Salina unless a health order mandating the same is in effect for Saline County.

The purpose of this ordinance is to defer any such restrictions to Saline County to impose at its discretion and subject to the framework of the “Kansas Emergency Management Act” (Kansas Statutes Annotated, Chapter 48, Article 9).

12. The Ordinance Petition and the proposed ordinance contained within the Ordinance Petition (“Ordinance”) conflict and do not comply with Kansas law.

13. More specifically, the Ordinance Petition’s conflict and compliance issues include, but are not limited to:

- a. Attempting to limit current and future governing bodies of the City from exercising their Home Rule Powers to protect the health, safety, and welfare of its citizens pursuant to Article 12, Section 5 of the Kansas Constitution and K.S.A. 12-101;
- b. Attempting to restrict current and future governing bodies of the City from exercising authority over administrative matters; and
- c. Violating the One-Subject Rule and title requirements at K.S.A. 12-3004 and, relatedly, the single-issue and distinctive title requirements at K.S.A. 25-3602(a).

14. The City seeks declaratory judgment that the Ordinance Petition and Ordinance conflict and do not comply with Kansas law for the reasons stated above.

15. The Court should also enter an injunction preventing the Ordinance from taking effect, even if the Ordinance is adopted by the electors of the City of Salina.

16. There is a reasonable probability that the Ordinance could be adopted by the electors of the City of Salina.

17. If the Ordinance is adopted by the electors of the City of Salina at the upcoming November election, the limitations in the Ordinance would severely restrict the power and authority of the governing body of the City of Salina from fulfilling its duties and responsibilities and could prevent the governing body from adequately responding to emergent circumstances in the public interest. That risk is especially heightened in the context of a global pandemic.

18. The inability to properly govern in an emergency situation is a practical consideration that is not amenable to a remedy at law in damages and could cause irreparable harm. That harm should be addressed by the Court through injunctive relief.

19. Such harm to the governing body and the City more broadly outweighs whatever harm an injunction will cause Mr. Korb.

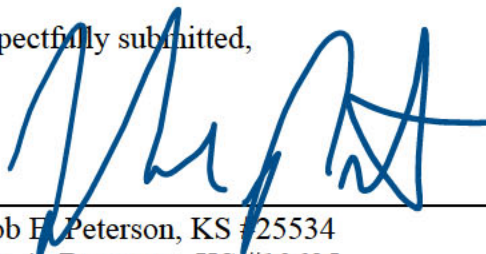
20. Such an injunction would be in the public interest.

21. While K.S.A. 25-3601 requires the Court to render a decision regarding “the form of the question” presented by the Ordinance Petition within 20 days of filing this action, the issues described above do not relate to “the form of the question.”

22. Nevertheless, the City requests a final ruling on the matters addressed by this Petition as soon as possible given the pending November general election.

WHEREFORE, the City of Salina prays for declaratory judgment and a permanent injunction as discussed above.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'JEP' followed by a stylized flourish.

Jacob E. Peterson, KS #25534

Greg A. Bengtson, KS #10695

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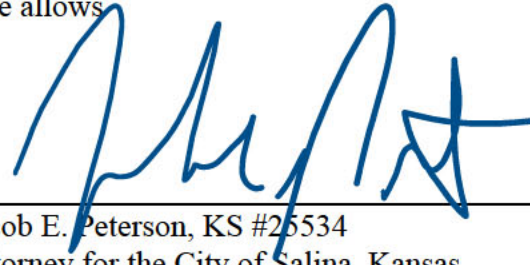
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Attorneys for the City of Salina, Kansas

REQUEST FOR CASE MANAGEMENT CONFERENCE

The City expressly requests that the Court conduct a Case Management Conference by video conference as soon as the Court's schedule allows.

A handwritten signature in blue ink, appearing to read 'J. Peterson', is written over a horizontal line.

Jacob E. Peterson, KS #25534
Attorney for the City of Salina, Kansas

EXHIBIT A

Shall the following ordinance become effective?

Summary of the proposed ordinance:

This ordinance prevents the City of Salina Governing Body from enacting any ordinance, in response to a public emergency, that imposes restrictions on businesses or citizens, leaving that responsibility to Saline County and subject to the Kansas Emergency Management Act.

Complete Text of the proposed ordinance:

AN ORDINANCE LIMITING THE POWER OF THE CITY OF SALINA GOVERNING BODY TO IMPOSE RESTRICTIONS ON BUSINESSES AND CITIZENS RELATED TO A STATE OF EMERGENCY DECLARED AT THE COUNTY OR STATE LEVEL

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SALINA, KANSAS:

Section 1. Definitions

"Business" means any organization or entity, whether open to the public or a private entity operating within the city limits of the City of Salina, Kansas.

"Citizen" for the purpose of this ordinance means any person residing in, or being present in the city at any time.

"Restriction" means any limitations on movement, behavior, business operation or general liberty that is imposed on businesses or citizens and is or would be reasonably perceived as a reaction to an "emergency state" that is declared at the State of Kansas or Saline County level

"Governing Body" means the City Commission of the City of Salina, Kansas

Section 2. Limitations on power of Governing Body to impose restrictions during emergency.

The Governing Body of the City of Salina shall not impose any restrictions on businesses or citizens of the City of Salina on activities that are otherwise lawful in response to any state of emergency declared at the County or State level. Examples of restrictions include but are not limited to: Limitations on business capacity, Limitations on business hours, Forcing a business to close, Restricting what may be bought or sold, Restrictions on citizens leaving their residence, Restrictions on citizens being in public places, Curfews applying to citizens, Forced medical treatment of any kind such as mandatory vaccines or the mandatory wearing of face coverings or other medical protective equipment.

The wearing of face coverings or other medical protective equipment may not be required on any public owned property, such as parks and other facilities operated by the City of Salina unless a health order mandating the same is in effect for Saline County.

The purpose of this ordinance is to defer any such restrictions to Saline County to impose at its discretion and subject to the framework of the "Kansas Emergency Management Act" (Kansas Statutes Annotated, Chapter 48, Article 9)

Section 3. Effective This ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper by the following summary:

This ordinance prevents the City of Salina Governing Body from enacting any ordinance in response to a public emergency that imposes restrictions on businesses or citizens, leaving that responsibility to the county and subject to the Kansas Emergency Management Act. A complete copy of the ordinance can be found at www.salina-ks.gov or in the office of the City Clerk, 300 W. Ash, free of charge.

RECEIVED

JUL 23 2021

**SALINE COUNTY
CLERK / ELECTION**

Instructions for petition signers and circulators:

You must be a registered voter and reside in Salina, KS in order to sign this petition

The petition must be signed in the presence of the circulator

You must not sign the petition more than once

You cannot sign for another person

A circulator cannot sign the same petition they carry

Print clearly using ink and make sure all information is accurate and that the address you write matches your voter registration

If you make a mistake, cross out the entire line and complete a new line

Each circulator must attest to each copy of the petition in the presence of a notary. Once attested, no additional signatures may be added to that copy.

Applicable law:

This petition was prepared in accordance with K.S.A. 12-3013, K.S.A 25-3601 and K.S.A. 25-3602

EXHIBIT B

RESOLUTION NUMBER 21-7979

A RESOLUTION AUTHORIZING THE CITY'S LEGAL COUNSEL TO FILE SUIT IN THE SALINE COUNTY DISTRICT COURT SEEKING DECLARATORY JUDGMENT AND ASSOCIATED LEGAL REMEDIES REGARDING THE VALIDITY AND STATUS OF AN INITIATIVE AND REFERENDUM PETITION AND PROPOSED ORDINANCE AND EXPRESSING THE INTENT OF THE CITY'S GOVERNING BODY, BY SEPARATE ORDINANCE, TO SUBMIT THE PROPOSED ORDINANCE TO THE VOTE OF THE ELECTORS OF THE CITY OF SALINA, KANSAS, AT THE NOVEMBER 2, 2021 CITY GENERAL ELECTION, WHILE RESERVING THE CITY'S RIGHTS TO PURSUE DECLARATORY JUDGMENT AND ASSOCIATED LEGAL REMEDIES REGARDING THE VALIDITY AND STATUS OF THE PETITION AND PROPOSED ORDINANCE.

WHEREAS, the Saline County Clerk/Saline County Election Officer has certified that a petition and proposed ordinance submitted pursuant to the initiative and referendum statute (K.S.A. 12-3013) under the title of: "AN ORDINANCE LIMITING THE POWER OF THE CITY OF SALINA GOVERNING BODY TO IMPOSE RESTRICTIONS ON BUSINESSES AND CITIZENS RELATED TO A STATE OF EMERGENCY DECLARED AT THE COUNTY OR STATE LEVEL" is signed by the required number of electors qualified to sign;

WHEREAS, in that event, K.S.A. 12-3013 provides, in part, that "the governing Body shall either (a) pass such ordinance without alteration within 20 days after attachment of the clerk's certificate to the accompanying petition or (b) if not passed within 20 days, forthwith call a special election, unless a regular city election is to be held within 90 days thereafter, and at such special or regular city election submit the ordinance, without alteration, to the vote of the electors of the city;"

WHEREAS, (a) the Governing Body does not intend to enact the proposed ordinance without alteration and (b) a regular city election is going to be held within 90 days on November 2, 2021;

WHEREAS, the Governing Body wishes to exercise its right to pursue declaratory judgment and any other appropriate legal remedies in the Saline County District Court regarding the validity and status of the petition and proposed ordinance;

WHEREAS, at the same time, the Governing Body also wishes to submit the proposed ordinance to the vote of the electors at the November 2, 2021 city general election in order to (a) comply with K.S.A. 12-3013 and (b) to avoid the public expense and delay associated with the special election potentially necessary if submission of the proposed petition to the vote of the electors is deferred pending the court's judgment.

THEREFORE, BE IT RESOLVED by the Governing Body of the City of Salina, Kansas:

Section 1. The Governing Body authorizes the City's legal counsel, the law firm of Clark, Mize

& Linville, Chartered ("Legal Counsel"), to file suit in the Saline County District Court seeking declaratory judgment and associated legal remedies regarding the validity and status of the initiative and referendum petition and proposed ordinance under the title of: "AN ORDINANCE LIMITING THE POWER OF THE CITY OF SALINA GOVERNING BODY TO IMPOSE RESTRICTIONS ON BUSINESSES AND CITIZENS RELATED TO A STATE OF EMERGENCY DECLARED AT THE COUNTY OR STATE LEVEL."

Section 2. The declaratory judgment action is intended to address the validity and status of the petition and proposed ordinance based upon the following potential issues:

"Home rule." Under Article 12, Section 5 of the *Kansas Constitution*, cities in Kansas have been granted "home rule" powers since July 1, 1961, following approval by voters at the November 1960 general election. Because the petitioned ordinance limits the ability of the current and future governing bodies of the City of Salina in the exercise of the City's constitutional home rule authority to act in the interest of the public health, safety, and welfare of its citizens, the issue is raised of whether the petitioned ordinance is unconstitutional under the *Kansas Constitution*.

Administrative aspect. Section 2 of the petitioned ordinance first prohibits restrictions on businesses or citizens in response to any state of emergency declared at the County or State level. The second paragraph of Section 2 provides: "The wearing of face coverings or other medical protective equipment may not be required on any public owned property, such as parks and other facilities operated by the City of Salina unless a health order mandating the same is in effect for Saline County." Because that provision regulates the City's operation of its own property and facilities, it raises the issue of whether the petitioned ordinance is administrative in nature, thus disqualifying the ordinance from consideration under the initiative and referendum process.

Single subject and title. Two separate and distinct statutes speak to the number of subjects and the title of the petition. First, Kansas law (K.S.A. 12-3004) provides, in part: "No ordinance shall contain more than one subject, which shall be clearly expressed in its title . . ." Second, and specifically in the initiative and referendum context, the "sufficiency of petitions" statute (K.S.A. 25-3602(a)) requires that: "Each petition shall consist of one or more documents pertaining to a single issue or proposition under one distinctive title." The subjects included under Section 2 of the petitioned ordinance and the exclusion of any reference in the title of the petitioned ordinance to the limitations placed upon the City in relation to the operation of its publicly owned and operated facilities raises the issue of whether the petitioned ordinance complies with K.S.A. 12-3004 and K.S.A. 25-3602(a).

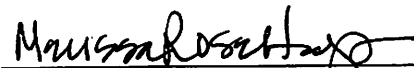
Section 3. Legal Counsel is authorized to further evaluate the issues outlined above and any others relevant to the validity and status of the petition and proposed ordinance and, based upon that evaluation, to prepare and file appropriate pleadings in the Saline County District Court requesting the Court's determination of matters deemed in Legal Counsel's discretion to warrant consideration by the Court.

Section 4. The Governing Body intends by separate ordinance to submit to the vote of the electors of the City of Salina, Kansas, at the November 2, 2021 city general election the question presented by the proposed ordinance, while reserving its rights to pursue declaratory judgment and any other appropriate remedies in Saline County District Court regarding the validity and status of the petition and proposed ordinance.

Section 5. This resolution shall be in full force and effect from and after its adoption.

Adopted by the Board of Commissioners and signed by the Mayor this 23rd day of August 2021.

(SEAL)


Melissa Rose Hodges, Mayor

ATTEST:


JoVonna A. Rutherford, City Clerk