



CITY OF TOPEKA

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To: Senate Committee on Commerce

From: Amanda Stanley, City Attorney
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Date: March 10, 2022

Re: Opposition Testimony/Written Only

I would like to thank Chairwoman Erickson and the Committee for allowing the City of Topeka the opportunity to provide opposition testimony to SB 505.

It is not hyperbole to state that SB 505 eliminates the concept of residential zoning. Under the bill, a local government is unable to regulate in any way home based work. "Home-based work", as defined by the bill, means any lawful occupation performed by a resident within a dwelling unit or accessory structure that is clearly incidental and secondary to the use of the dwelling unit for residential purposes. If one only looked at the definition of home based work, the bill appears to subordinate non-residential activities (e.g., retail business) to the affect that a residential use remains the clear primary use. In other words, there would be no outward appearances or signs of commercial activities that would not otherwise be expected in a residential neighborhood.

However, the bill handcuffs local governments from actually using tools to achieve that outcome with broad prohibitions particularly in lines 29-36. The only way to ensure proper alignment with the intended outcome is to in fact allow some regulation of the size, place, and manner of those non-residential uses as typically is accomplished through zoning regulations. For example, standards for number or type of non-resident employees, the proportion of floor space for home-based work, the outside storage of materials, the number of visitors, hours of appointments, off and on-street parking, building code compliance, etc. are all legitimate and necessary tools local zoning regulations need to ensure home-based work minimizes intrusion of commercial character into residential neighborhoods. This bill takes away the very tools localities need to ensure the intended outcome already acknowledged in the definition.

If allowed to stand, this bill would gravely interfere with a locality's ability to protect the public's health, safety, and welfare which is the constitutional foundation of zoning. For example, under the plain language of the statute, a city would not be able to prohibit a home based massage parlor open from 10 pm to 2 am. A city could not require structural modifications to ensure sanitary conditions for day spa. Want to build multiple structures for business operations in the backyard? That could not be prohibited.

The purpose of zoning inside city limits is not to inhibit business and entrepreneurs but to allow such activity through compatible land use distribution to meet the community's vast needs in an orderly manner which allows all citizens the enjoyment to live, work, and play. A person who buys a house inside city limits in a residential neighborhood expects protection from certain things such as excessive noise, light, odor, traffic, signs, erosion of land, or other industry not typically found in residential areas. They also expect local government to protect unreasonable piercing of their residential character with outward appearances and tangible negative impacts. Zoning helps to keep property values stable and creates a balanced community of lasting value.

SB 505 upends that balance. We would urge you to leave zoning decisions in the hands of our planning commissions and local governing bodies who are best equipped to evaluate the proper land use balance for each of our communities.