



STATE OF KANSAS

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ATTORNEY GENERAL

March 23, 1992

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ATTORNEY GENERAL OPINION NO. 92- 41

Vernon Jarboe  
City Attorney  
215 E. 7th Street  
Topeka, Kansas 66603-3979

Elsbeth D. Schafer  
Assistant City Attorney  
215 E. 7th Street  
Topeka, Kansas 66603-3979

Re: Cities and Municipalities--Planning and Zoning;  
Planning, Zoning and Subdivision Regulations in  
Cities and Counties--Protest Petitions; Mayor in  
Mayor-Council Form of Government Not a Voting Member

Synopsis: A mayor in a mayor-council form of municipal  
government may not vote on any matters before the  
council pursuant to K.S.A. 12-10a02. Therefore,  
only the votes of the council should be considered  
in determining the 3/4 vote of all of the members  
of the governing body which is required to override  
a protest petition, pursuant to K.S.A. 12-757(e).  
Cited herein: K.S.A. 12-742; 12-757; 12-10a01;  
12-10a02.

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Dear Mr. Jarboe and Ms. Schafer:

As attorneys for the city of Topeka, you have requested our  
opinion regarding K.S.A. 12-757(e). Specifically, you ask  
whether the language in K.S.A. 12-757(e) grants a vote to the  
mayor in a mayor-council form of municipal government.

Pursuant to K.S.A. 12-757(e), "a 3/4 vote of all of the members of the governing body" is required to adopt a zoning amendment when a protest petition has been filed against it. A governing body is defined under this act as "the governing body of a city in the case of cities. . . ." K.S.A. 12-742.

When a city operates under a mayor-council form of government, it is governed by the provisions of K.S.A. 12-10a01 et seq. See K.S.A. 12-10a01. Pursuant to K.S.A. 12-10a02, the governing body is defined as follows:

"The governing body shall consist of a mayor and three (3) members of the council elected at large and four (4) members of the council elected by districts.

. . . .

"Any action taken by the city council shall be by a majority vote of the members of the council serving on the council unless a greater number of votes are specifically required by another provision of law. The mayor may submit proposals for the consideration of the council, but may not vote on any matter before the council. (Emphasis added).

Thus, while K.S.A. 12-757(e) requires a 3/4 vote by "all of the members of the governing body," K.S.A. 12-10a02 specifically forbids the mayor from voting on any matters before the council. K.S.A. 12-757 does not specifically preempt K.S.A. 12-10a01, so the two statutes must be read to give effect to both if possible. Kansas Racing Management, Inc., v. Kansas Racing Commission, 244 Kan. 343, 353 (1989). In our opinion K.S.A. 12-757(e) can be read to require 3/4 vote of only the council members in a mayor-council form of city government. Therefore, the mayor should not be included in the 3/4 vote.

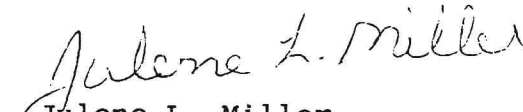
In conclusion, K.S.A. 12-10a02 governs that a mayor in a mayor-council form of municipal government may not vote on any matters before the council. Therefore, K.S.A. 12-757(e) does not grant a mayor voting; power only the council members will

constitute the 3/4 vote required to adopt a zoning amendment  
when a protest petition has been filed.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm

**CITY OF LANSING**  
**CITY COUNCIL MEETING**

**REGULAR MEETING MINUTES**  
**March 20, 2025**

**Call To Order:**

The regular meeting of the Lansing City Council was called to order by Mayor McNeill at 7:00 p.m.

**Roll Call:**

Mayor McNeill called the roll and indicated which Councilmembers were in attendance.

**Councilmembers Present:**

**Ward 1:** Kevin Gardner and Gene Kirby

**Ward 2:** Donald Studnicka and Jake Kowalewski

**Ward 3:** Kerry Brungardt and Jesse Garvey

**Ward 4:** Dan Clemons and Pete Robinson

**Councilmembers Absent:**

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**OLD BUSINESS:**

The Regular Meeting minutes of March 6, 2025, were provided for review.

Councilmember Brungardt made a motion to approve the Regular Meeting Minutes of March 6, 2025, as presented. Councilmember Kirby seconded the motion.

**Roll Call Vote:** Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.

**Tabled - Ord No. 1128 Delaware Ridge Rezone**

The applicant requests approval to rezone a 112.8-acre parcel located at 24132 139th Street from A-1 (Agricultural District) to R-4 (Multi-Family Residential District), B-3 (Regional Business District), and I-2 (Heavy Industrial District). The proposal envisions future commercial, residential, and industrial development on the site. At its meeting, the Planning Commission voted 3-2 to recommend approval of the R-4 and B-3 portions of the rezoning application. However, the Planning Commission did not recommend approval of the requested industrial zoning (I-2) and voted to remove the portion of land that the Applicant requested Industrial zoning off of the application. At the request of the applicant, this matter was tabled from the March 6, 2025, City Council meeting. In accordance with Lansing's UDO, the City Council may:

- o Approve the application in accordance with the Planning Commission's Recommendation;
- o Override the Planning Commission's recommendation (in whole or in part) by a two thirds majority vote of the Council;
- o Return the application to the Planning Commission for further review of specified factors;
- o Deny the application.

**Public Comments from property owners began at 7:02PM and ended at 8:10PM:**

- Chad Schimke – 11710 Kelly Rd Leavenworth, KS
- Rebecca Minion – 13883 McIntyre Rd
- Mary Moppet – 13885 McIntyre Rd
- John Redden – 24170 131<sup>st</sup> St Leavenworth, KS
- Paul Cromer – 23916 131<sup>st</sup> St Leavenworth, KS
- April Cromer – 23916 131<sup>st</sup> St Leavenworth, KS
- Trina Gilbert – 24227 139<sup>th</sup> St Leavenworth, KS (Letter from Sarah George)

- Janie Stockton – 24324 131<sup>st</sup> St Leavenworth, KS
- Larry Boswell – 24648 127<sup>th</sup> St Leavenworth, KS
- Joseph Irwin – 24282 126<sup>th</sup> St Leavenworth, KS
- Chuck Irwin – 24282 126<sup>th</sup> St Leavenworth, KS
- Kirstin Workman
- Scott Tenner – 13697 McIntyre

Councilmember Kirby made a motion approve the application in accordance with the Planning Commission's recommendation and to adopt Ordinance No. 1128 to amend the City of Lansing Zoning Map. Councilmember Garvey seconded the motion.

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Kirby, and Kowalewski; Nay: Mayor McNeill and Councilmembers Studnicka and Gardner; Abstain: none; Absent: none; The motion failed as a super majority is required.**

**Audience Participation:** None

**Presentations:** None

**COUNCIL CONSIDERATION OF AGENDA ITEMS:**

**Professional Services Agreement - 2025 Inflow and Infiltration Study**

This project will take place in sub-basin 6, generally defined by Fairlane on the south, Woodland to the north, and K7 to the east. The scope of the work includes multiple investigative techniques.

Councilmember Kirby made a motion to approve the scope and fee from GBA for the 2025 Inflow and Investigation Study in the amount of \$134,471.00 (base fee of \$128,067.00 plus a contingency of 5%). Councilmember Kowalewski seconded the motion.

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.**

**Ordinance No. 1127 Hayslett LCHS Rezone - Case 2024-DEV-007**

The Applicant proposes to rezone a 0.59-acre tract of land from A-1 to B-2. The Future Land Use Map of the Lansing Comprehensive Plan categorizes this property as Commercial and Open Space Agriculture. The applicant is proposing to split the property to sell the property to the property owner at 1024 S Main (adjacent to the North). The property has access to South Main Street

Councilmember Brungardt made a motion to adopt Ordinance No. 1127 to amend the City of Lansing Zoning Map. Councilmember Garvey seconded the motion.

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.**

**Ordinance No. 1129-Adopting the Codification of Ordinances**

This ordinance codifies any changes and ordinances passed since the last codification ordinance. By adopting this ordinance, the City Code will be codified with these changes. This is supplement #10 to the City Code.

**Councilmember Kirby made a motion to adopt Ordinance No. 1129-Adopting the Codification of Ordinances. Councilmember Kowalewski seconded the motion. No discussion took place.**

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.**

#### **Executive Session – Consultation with Attorney**

**Councilmember Kirby made a motion to enter into Executive Session for consultation with the Attorney for the City which would be deemed privileged in an Attorney-Client relationship, K.S.A. 75-4319(b)(2) for 20 minutes, beginning at 8:15 PM and returning to the Council Chambers at 8:35 PM and to include the Governing Body, City Administrator, Fire Chief, and City Attorney. Councilmember Kowalewski seconded the motion.**

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.**

**Councilmember Kirby made a motion to return to Open Session at 8:35 PM. Councilmember Kowalewski seconded the motion. No binding action was taken.**

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.**

**Councilmember Clemons made a motion to allow Leavenworth Board of County Commissioners to proceed with Fire District #1 actions as they see fit and release the Board of County Commissioners from the Fire Protection Service contract upon demand on April 1, 2025, or beyond. Councilmember Brungardt seconded the motion.**

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.**

#### **REPORTS:**

##### **Department Heads:**

**Community and Economic Development Director Joshua Gentzler:**

- Independence Day 2026 and the country's 250<sup>th</sup> anniversary.
- Proposal of celebration on July 3, 2026, instead of June 27, 2026. Discussion occurred and the general consensus of the Council was to hold the celebration on July 3, 2026.

**City Attorney:** Nothing to report.

**City Administrator:** Nothing to report.

##### **Governing Body:**

**Councilmember Garvey:**



- Nothing to report.

Councilmember Robinson:

- Disappointed that the Board did not hold through to making housing a priority.

Councilmember Clemons:

- Leavenworth County Port Authority Docket update.
- Leavenworth Board of County Commissioners budget is based on 90% property taxes and 10% business and industry. The only way to lower taxes for the citizens is to get industry and rooftops.

Councilmember Brungardt:

- Ditto.

Councilmember Studnicka:

- Nothing to add.

Councilmember Gardner:

- Council has an obligation to listen to the people and to grow.
- McIntyre Rd will be affected by the approved plans for Highway 5 becoming a main artery to 435.
- Growth is limited to the south.
- The council has duties and obligations. If Lansing doesn't grow, we're going to stagnate and people around us are going to grow and we're going to suffer.
- Change has to happen whether we like it or not.

Councilmember Kirby:

- Agree with all the previous statements.

Councilmember Kowalewski:

- Nothing to add.

**ADJOURNMENT:**

**Councilmember Kowalewski made a motion to adjourn. Councilmember Garvey seconded the motion.**

**Roll Call Vote: Aye: Councilmembers Garvey, Robinson, Clemons, Brungardt, Studnicka, Gardner, Kirby, and Kowalewski; Nay: none; Abstain: none; Absent: none; The motion was approved.**

The meeting was adjourned at 8:45 PM.

**ATTEST:**



City Clerk Tish Sims, CMC