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To: **Governing Body**
From: **Spencer Low, City Attorney**
Date: **March 17, 2023**
Subject: **2023 Election for Spring Hill, Kansas**

I. Issues Presented:

- 1. Is Joe Berkey Mayor or Acting Mayor of the City of Spring Hill?**
- 2. When is next election for the Office of Mayor of Spring Hill?**

II. Short Answer

Mr. Joe Berkey is the current Mayor of Spring Hill, Kansas and not an Acting Mayor. He will continue to be Mayor until the next regular election for that office, which will be held in November 2025. As such, the 2023 election in Spring Hill will not have a race for Mayor.

III. Introduction

Tyler Graves was duly elected to the office of mayor of the City of Spring Hill, Kansas on November 2, 2021; however, he moved to Florida prior to the date of his swearing in – January 10, 2022 – and the City accordingly had a vacancy in the office of Mayor for outgoing mayor Steven Ellis.

F. Charles Dunlay, at the request of Mr. Ellis prepared a legal memorandum dated December 8, 2021 regarding the issue of Mr. Graves' election, the vacancy in the office of Mayor it would create, and authority under Kansas statutes, Spring Hill Charter Ordinances, and the Spring Hill Municipal Code to navigate the situation. This memorandum provides additional factual information but will not be re-stated here.

On November 10, 2022 the Spring Hill Governing Body, in accordance with Section Seven of Charter Ordinance 36, elected one of its members as President of the Council – Joe Berkey. Once the new Governing Body had a President of the Council, Mr. Ellis had a qualified successor and his term as mayor concluded.

In accordance with Section Five of Charter Ordinance 36, Mr. Berkey as President of the Council became mayor until the next regular election for that office. Mr. Berkey was sworn in as

Mayor and has served as the Mayor of Spring Hill, Kansas since then. Upon being sworn in as Mayor, he was no longer a member of the City Council, and indeed Councilmember Wendy North was appointed to fill his prior seat, also pursuant to Section Five of Charter Ordinance 36.

IV. Relevant Legal Principles

With the intent of providing a relatively concise legal opinion, I will briefly set forth some applicable legal principals, but not an exhaustive discussion of how Kansas law requires us to interpret Charter Ordinances, state statutes, and municipal code.

Pursuant to the Constitution of the State of Kansas, Article 12, Section 5, cities in the State of Kansas, are empowered to determine their local affairs and government – this is called home rule authority. Cities use home rule authority to exempt themselves from legislative enactments or portions of an enactment which are applicable to the city but are not uniformly applicable to all cities in the State of Kansas. To exempt itself in this manner, a city passes a Charter Ordinance. K.S.A. Const. Art. 12, § 5 (c)(4) provides that a charter ordinance “shall control and prevail over any prior or subsequent act of the governing body of the city and may be repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities.”

This is important because the questions presented here are solely answerable through review of Charter Ordinances, meaning that consultation of the Spring Hill Municipal Code is not necessary to resolve the questions posed.

When the City transitioned from a city of the third class to a city of the second class, the City enacted several Charter Ordinances to retain its prior governance structure and exempt itself from certain Kansas statutes governing cities of the second class. Charter Ordinance Nos. 36 and 26, exempt the City from the multiple state statutes – germane to this issue is an exemption from statutes regarding vacancy in the office of mayor.

Charter Ordinance No. 36 in part amended the date of city elections, repealed or amended several provisions of Charter Ordinance No. 26. Charter Ordinance No. 36 importantly reaffirmed the following portion Charter Ordinance No. 26. Charter Ordinance 36 provides in Section Five:

1. Vacancy in Office of Mayor. In case of a vacancy in the office of mayor, the president of the council shall become mayor until the next regular election for that office and a vacancy shall occur in the office of the council member becoming mayor.
2. Vacancy in City Council. In case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining council members, shall appoint some qualified elector to fill the vacancy until the next election for that office.

3. In case any person elected as a council member neglects or refuses to qualify within 30 days after election, the council member shall be deemed to have refused office and a vacancy shall exist. The mayor may, with the consent of the remaining council members, appoint a suitable elector to fill the vacancy.

Charter Ordinance 36 additionally affirmed Charter Ordinance 28. Charter Ordinance 36 provides in Section Seven:

[T]he City Council shall, at its regular meeting following any City election, elect one of its members as “President of the Council.” When any vacancy shall happen in the office of Mayor, the President of the Council for the time being shall exercise the office of Mayor, and all the rights, privileges and jurisdiction of the Mayor, other than the appointment of officers or employees, until such vacancy be filled at the next City election or until such disability be removed, or in the case of temporary absence, until the Mayor shall return.

In interpreting statutes, including a City’s Charter Ordinance and Municipal Code, courts seek to reconcile all provisions to make them harmonious, consistent, and sensible. Statutes, and Charter Ordinances, are also interpreted to avoid any words or phrases being rendered meaningless or superfluous.

V. Is Joe Berkey the Mayor of Spring Hill Kansas?

In a word, yes.

On January 10, 2022, there was no successor to Mr. Ellis as mayor because Mr. Graves was not qualified to be mayor due to his new residence in Florida. Because an election had occurred and a new Council was seated on January 10, 2022, there was no President of the Council until the new Council elected a President from among themselves. The Council took that step, electing Mr. Berkey as President of the Council. As President of the Council, Mr. Berkey was a qualified successor to Mr. Ellis as Mayor and he was sworn in as Mayor.

Once Mr. Berkey was sworn in as the Mayor of Spring Hill, Kansas, he was no longer a member of the City Council or the President of the Council; his former seat on the City Council was vacant. Councilmember Wendy North was appointed to fill that vacant seat pursuant to Charter Ordinance 36, Section 5, Subsection 2.

Mr. Berkey has been the Mayor since he was sworn in on January 10, 2022, and will remain the mayor until the next election for that position – mayor. The next election for mayor in Spring Hill will be in November 2025, pursuant to K.S.A. § 25-2102. Charter Ordinance No. 36, Section Five, specifies that when the President becomes the Mayor, they shall be the Mayor until the next regular election for that office.

To the extent Section Seven of Charter Ordinance 36 appears to conflict or be inconsistent with Section Five, statutory interpretation principals show that the two sections can be and should be read harmoniously.

Section Seven has not applied to Mr. Berkey since he was sworn in as Mayor of Spring Hill. Once Mr. Berkey was sworn in, Councilmember Diana Roth was elected as President of the Council, and Section Seven of Charter Ordinance 36 applies only to her, until a new President of the Council is elected.

Section Five clearly and unambiguously provides that where there is a vacancy in the office of Mayor, as there was when Mr. Ellis' term ended without Mr. Graves eligible to take the seat, the President of the Council "shall become mayor until the next regular election for that office and a vacancy shall occur in the office of the council member becoming mayor." On January 10, 2022 the City and the Governing Body acted pursuant Section Five: swearing in Mr. Berkey as mayor and filling the resulting vacancy in the City Council.

The swearing in of Mr. Berkey is significant, and demonstrates the difference between Section Five and Section Seven. Section Seven's language relates only to temporary vacancies in the office of Mayor, such as if the mayor is absent or a meeting. In such an event, the President of the Council – currently, Ms. Roth – "shall exercise the office of Mayor" will all privileges except appointments of officers.

To assist in understanding the difference, if Mayor Berkey is absent for one meeting, Ms. Roth as President of the City Council serves as the Mayor at that meeting. This entails Ms. Roth moving chairs, but does not require her to be sworn in as the Mayor. The vacancy in the office of Mayor as of January 10, 2022 was not temporary, but was permanent, and Mr. Berkey was sworn in as Mayor.

In short, Section Five of Charter Ordinance 36 relates to permanent vacancies, while Section Seven of Charter Ordinance 36 relates to temporary vacancies.

In evaluating when the next election for Mayor should be, the importance of the word "regular" as a qualifier of phrase "regular election for that office" cannot be understated. It cannot be assumed that the City placed a meaningless or superfluous word in Charter Ordinance 36, Section Five. Reading Charter Ordinance 36 to require that Mr. Berkey run for Mayor again in 2023 – prior to the next regular election for the office of mayor – would render language meaningless and superfluous.

The next election for the office of Mayor of Spring Hill will occur in November, 2025. Accordingly, the 2023 election will not include a race for the Mayor of Spring Hill, Kansas.