RESOLUTION NO. 719

A RESOLUTION DETERMINING THAT THE PROPOSED ORDINANCE CONCERNING HIGH IMPACT DATA CENTERS AND BATTERY ENERGY STORAGE SYSTEMS IS PRINCIPALLY ADMINISTRATIVE AND EXCLUDED FROM K.S.A. 12-3013

WHEREAS, on September 8, 2026, an initiative petition was filed with the City Clerk seeking adoption of the proposed ordinance attached to this Resolution as Exhibit A (the "Proposed Ordinance"); and

WHEREAS, the Butler County Election Officer issued a written certification dated September 25, 2026, reporting that 328 electors voted at the last preceding regular City election, that 132 valid signatures were required, and that 230 valid signatures appeared on the petition, thereby satisfying the numerical signature requirement of K.S.A. 12-3013; and

WHEREAS, the City Clerk attached the Clerk's certificate and the County Election Officer's certification to the petition on September 25, 2026, at 9:41 a.m.; and

WHEREAS, K.S.A. 12-3013(e)(1) excludes an ordinance that is principally executive or administrative from the municipal initiative process, and the Kansas Supreme Court directs that the classification depends upon the measure's dominant character in its particular factual setting, including whether it establishes new policy or instead executes policy already fixed by existing law. See *McAlister v. City of Fairway*, 289 Kan. 391, 399-405, 212 P.3d 184 (2009); and

WHEREAS, under *McAlister v. City of Fairway*, 289 Kan. 391, 212 P.3d 184 (2009), the essential character of a proposed ordinance is determined from the particular factual setting by considering whether the measure: (1) makes new law or executes existing law, including its permanency and generality; (2) declares a public purpose and supplies the means to accomplish it or instead addresses a segment of an existing policy; (3) intrudes into decisions requiring specialized municipal training, experience, and knowledge of the City's fiscal and operational affairs; and (4) concerns a matter of statewide concern for which the Legislature has delegated implementation to local councils, boards, or officials;

WHEREAS, *McAlister* further holds that no single consideration invariably controls, that a measure need not be solely administrative to be excluded, and that one consideration may carry sufficient weight when the practical operation of the measure intrudes too far into municipal administration;

WHEREAS, the Governing Body has reviewed the Petition according to its plain language and practical operation, rather than according to its title, the identity or motives of its sponsors, the popularity of its policy, or the Governing Body's view of the desirability of the covered facilities;

WHEREAS, before circulation of the Petition, the City had adopted a comprehensive plan and comprehensive zoning regulations governing land uses, districts, development standards, interpretation and classification of uses, zoning amendments, conditional uses, site plans, variances, enforcement, and administrative and judicial review;

WHEREAS, the City's preexisting zoning regulations expressly identified Data Processing Centers within the City's use-classification system for years before the Petition was filed, and the regulations also established a procedure for classification and review of uses not separately named;

WHEREAS, the proposed ordinance does not adopt a comprehensive land-use plan or a complete regulatory program for data centers, battery storage, utilities, fire safety, infrastructure, or industrial development; instead, it removes two defined classes of facilities from the City's existing planning and land-use system and permanently dictates the result of every present and future municipal classification, permit, site-plan, conditional-use, zoning-amendment, variance, enforcement, and related infrastructure decision involving those classes;

WHEREAS, the proposed ordinance would prohibit the construction, installation, operation, and maintenance of every covered facility throughout the City's jurisdiction, without site-specific consideration of location, scale, technology, utility demand, water supply, electrical interconnection, roads, emergency response, fire protection, hazardous materials, noise, buffering, environmental effects, fiscal effects, decommissioning, financial assurance, compatibility with neighboring uses, or conditions capable of mitigating an identified impact;

WHEREAS, the proposed ordinance would also direct City officers to enforce new civil and criminal consequences while providing no express administrator, application procedure, evidentiary standard, waiver, variance, appeal, treatment of pending applications, or protection for existing lawful uses and vested approvals;

WHEREAS, the Governing Body recognizes that the Petition contains legislative characteristics: it states a public-health and safety purpose, creates definitions and permanent citywide prohibitions, and for Tier 2 and Tier 3 battery energy storage systems establishes express capacity classifications not presently stated in the same terms in the City's zoning regulations;

WHEREAS, those legislative characteristics have been considered and are not treated as irrelevant; the Governing Body nevertheless finds that the Petition must be evaluated as one submitted measure, without rewriting, severing, or narrowing it, and that its predominant practical operation is to command and foreclose the execution of the City's existing comprehensive planning, zoning, permitting, utility, safety, and enforcement functions for selected uses;

WHEREAS, in City of El Dorado v. Dickson and Protect the Heartland, Inc., Butler County District Court Case No. BU-2026-CV-000245 (Aug. 24, 2026), the district court held a substantially similar proposed ordinance legislative in essential character;

WHEREAS, the Governing Body has considered that decision as contrary persuasive authority, but it is not binding appellate precedent and arose from a materially different factual record in which El Dorado's first specific regulation of high-impact data centers was adopted only weeks before the petition was circulated; the El Dorado court expressly distinguished a situation involving a long-standing zoning provision regulating data centers, which is the material circumstance presented by Rose Hill's preexisting classification of Data Processing Centers and established land-use system;

WHEREAS, the Governing Body does not rely on the proposition that K.S.A. 12-741 et seq. categorically preempts every elector-initiated zoning measure; rather, the statutory planning framework and the City's implementing regulations are considered as part of the factual and legal context showing that this Petition selectively supplants ongoing functions committed to the Planning Commission, Governing Body, Zoning Administrator, Board of Zoning Appeals, and other City officials;

WHEREAS, the Legislature has enacted statewide measures governing substantial parts of the operational field implicated by the Petition: 2025 Senate Bill 98 establishes a state-administered qualified-data-center program involving tax incentives, electric service, water-conservation commitments, and critical-infrastructure security review; 2026 Senate Bill 92 expressly addresses high-voltage industrial, commercial, and data-center loads within the statewide parallel-generation framework; 2025 Substitute for House Bill 2149 regulates distributed-energy-system sales, interconnection, operation, and utility coordination while recognizing municipal and county permitting and inspection requirements; and 2024 House Substitute for Senate Bill 291 establishes statewide cybersecurity

governance and standards relevant to the broader information-infrastructure context;

WHEREAS, these enactments do not expressly require a city to approve a data center or battery energy storage facility, do not expressly preempt local land-use regulation, and do not specifically regulate Tier 2 or Tier 3 battery energy storage systems as those terms are defined in the Petition; their significance here is evidence that the Legislature treats data-center development, large electrical loads, distributed-energy interconnection, water use, and critical-infrastructure security as subjects extending beyond a single municipality and assigns implementation responsibilities among state agencies, utilities, and local officials;

WHEREAS, the Governing Body further does not rely on possible vagueness, single-subject, vested-rights, due-process, takings, preemption, ballot-form, or other enforceability objections as substitutes for the administrative-versus-legislative analysis; those questions are separate and are preserved without decision except as expressly stated in this Resolution; and

WHEREAS, after weighing the competing characteristics and the Rose Hill-specific record, the Governing Body finds that the administrative characteristics predominate and that the proposed ordinance is not quite clearly and fully legislative and free from principally executive or administrative operation within the meaning of K.S.A. 12-3013(e)(1) and McAlister.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROSE HILL, KANSAS:

Section 1. **Record considered**. The Governing Body adopts the recitals as findings and incorporates the materials actually presented at the public meeting at which this Resolution is considered, including: (a) the Petition and proposed ordinance; (b) the County Election Officer's final certification and supporting election-participation record; (c) the City Clerk's certificate; (d) the City's comprehensive plan, zoning regulations, use matrix, relevant adopting and amending ordinances, and provisions governing classification of unlisted uses; (e) written reports or testimony from City planning, zoning, administration, utilities, engineering, fire, emergency-response, finance, and legal personnel; (f) the enrolled acts and official legislative records for 2025 Senate Bill 98, 2026 Senate Bill 92, 2025 Substitute for House Bill 2149, and 2024 House Substitute for Senate Bill 291; and (g) the other authorities identified in this Resolution. No material not presented to the Governing Body is incorporated merely by reference.

Section 2. **First McAlister consideration**. The Petition is permanent and contains new definitions and prohibitions, which are legislative characteristics. In the Rose Hill factual setting, however, the measure's primary operation is not to establish a comprehensive new land-use policy. It isolates two use categories from the City's existing comprehensive plan and zoning system, prevents execution of preexisting classification and review provisions, and fixes the administrative result for those uses. If enacted, K.S.A. 12-3013(c) would prevent amendment or repeal by the Governing Body for ten years unless the electors acted. The data-center provisions therefore execute, restrict, and displace a segment of existing law. The BESS provisions add more new terminology, but they operate through the same categorical command to City officers and do not change the essential character of the Petition when considered as a whole. This consideration is mixed but, on balance and in this factual setting, weighs toward administrative character.

Section 3. **Second McAlister consideration**. The Petition states a public purpose of protecting health, safety, welfare, residents, and infrastructure, and it supplies an absolute prohibition as its means. Those features weigh toward legislative character. At the same time, the measure addresses only selected technology-defined uses within the City's broader and already established policies governing industrial development, land use, utilities, fire protection, infrastructure, and public safety. Because both characteristics are substantial, the Governing Body assigns this consideration limited weight and does not treat it as controlling.

Section 4. **Third McAlister consideration**. This consideration weighs heavily toward administrative character. The Petition does more than announce an abstract preference. By prohibiting one hundred percent of the covered facilities everywhere in the City and prohibiting their operation and maintenance, it conclusively determines all municipal decisions involving those uses and prevents the City from applying specialized knowledge to any location, scale, technology, mitigation, infrastructure condition, existing use, pending application, or future circumstance. Its practical effect is to dictate the result of planning, zoning, permitting, utility-capacity, fire-safety, emergency-response, infrastructure, fiscal, and enforcement decisions ordinarily made through interdependent administrative processes. Under McAlister, an extensive restriction may be principally administrative when its practical effect forecloses choices requiring municipal expertise, even when other considerations appear legislative.

Section 5. **Fourth McAlister consideration**. Kansas has not expressly required cities to permit the covered facilities, prohibited cities from excluding them, or preempted local land-use regulation of them. That limitation prevents the

statewide-concern consideration from being dispositive. The Legislature has nevertheless made data centers and related large-load, distributed-energy, water, and critical-infrastructure issues subjects of statewide policy. The state-administered program enacted in 2025 Senate Bill 98 directly governs qualified data centers through investment and employment requirements, tax treatment, electric-service provisions, water-conservation commitments, and critical-infrastructure security review. The parallel-generation law amended by 2026 Senate Bill 92 expressly accounts for new or expanded data-center customers receiving service at 34.5 kilovolts or higher. The distributed-energy framework enacted by 2025 Substitute for House Bill 2149 regulates interconnection and operation and expressly recognizes local permits and inspections. The cybersecurity governance enacted by 2024 House Substitute for Senate Bill 291 is relevant only to the broader information-infrastructure context and does not regulate data-center or battery-storage siting. Read together with K.S.A. 12-741 et seq., these laws demonstrate interrelated state, utility, and local responsibilities rather than a subject confined to one municipality. The Petition's permanent categorical command would prevent City officials from performing the local planning, permitting, inspection, utility, safety, and infrastructure judgments through which those broader policies are integrated. This consideration therefore supports administrative character, but the Governing Body does not treat the cited enactments as express siting preemption, as a mandate to approve any facility, or as direct state regulation of Tier 2 or Tier 3 battery energy storage systems.

Section 6. **Essential character**. Considering the Petition as submitted and weighing all four considerations together, the Governing Body finds that its administrative characteristics predominate. The decisive facts are the City's established regulation of Data Processing Centers before the Petition, the Petition's selective displacement of a comprehensive planning and zoning system, and the breadth of its command foreclosing all exercise of specialized municipal judgment concerning the covered uses. The proposed ordinance is therefore principally administrative within the meaning of K.S.A. 12-3013(e)(1).

Section 7. **Disposition**. Because K.S.A. 12-3013 does not apply to administrative ordinances, the Governing Body declines to pass the proposed ordinance and declines to call an election on it under K.S.A. 12-3013. This decision concerns statutory initiative eligibility only. It does not approve any data center or battery energy storage system, decide any pending or future land-use application, or determine what permanent standards the City should adopt through otherwise applicable procedures.

Section 8. **Independent issues preserved**. The City does not waive and expressly preserves all arguments and defenses concerning petition sufficiency, circulator verification, withdrawals, ballot form, single-subject compliance, statutory procedure, jurisdiction, preemption, vested rights, nonconforming uses, due process, equal protection, takings, vagueness, penalties, severability, and enforceability. Except for the administrative determination made in this Resolution, no such issue is necessary to or adjudicated by this action.

Section 9. **Notice and record**. The City Clerk shall attach a certified copy of this Resolution to the City's petition record and promptly provide a copy to the Petition's designated representative and the Butler County Election Officer. The Clerk shall preserve the Petition, all certifications, the materials identified in Section 1, the agenda, minutes, recording, written submissions, and proof of notice associated with the Governing Body's consideration of this Resolution.

Section 10. **Judicial resolution**. The City Attorney is authorized to commence, defend, or participate in an action for declaratory, injunctive, mandamus, or other appropriate relief to obtain prompt judicial resolution of the City's duties under K.S.A. 12-3013, and to request expedited consideration when necessary. Nothing in this authorization alters the requirement that any binding policy decision reserved to the Governing Body be made in an open meeting.

Section 11. **No substantive land use regulation**. This Resolution does not amend the comprehensive plan or zoning regulations, impose a moratorium, prohibit a land use, or create a permit standard. Any temporary or permanent land-use regulation shall be considered separately under the procedures applicable to that measure.

Section 12. **Severability**. If any section, sentence, clause, or phrase of this Resolution is held invalid, the remaining provisions shall remain effective to the fullest extent permitted by law; provided, however, that the administrative determination in Section 6 and disposition in Section 7 are intended to operate together.

Section 13. **Effective date**. This Resolution shall take effect upon adoption.

ADOPTED by the Governing Body of the City of Rose Hill, Kansas, on October 5th, 2026.

CITY OF ROSE HILL, KANSAS

Jeanine Schantz, Mayor

ATTEST:

Kelly Mendoza, City Clerk

APPROVED AS TO FORM:

Richard A. Samaniego, City Attorney

Vote: Yeas 4 Nays 1 Abstentions _____ Absent _____