IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS

JANICE BASTON,	)
and	)
R. MATTHEW JOYCE	)
Petitioners,	)
vs.	)
CITY OF DERBY, KANSAS,	)
a city of the second class, and	)
KATHLEEN SEXTON,	)
in her capacity of	)
Derby City Manager	) **CASE NO. 09-CV-3598**
Respondents	)

AMENDMENT OF PETITION FOR DECLARATORY JUDGMENT ADDING CAUSES OF ACTION FOR DERBY CITY ORDINANCES 1980 AND 1997 VIOLATING K.S.A 12-3004 AND K.S.A. 12-194

COMES NOW, Petitioners Janice Baston and R. Matthew Joyce, through the Rouleau Law Firm, P.A., their attorney, with an amendment of their complaint, as per K.S.A. 60-215, against Respondents due to their actions, of enacting Derby City Ordinance 1980 and Derby City Ordinance 1997 in violation of K.S.A. 12-3004, by failing to state in the titles of these ordinances that the body of these ordinances include a revenue purpose and the ability to set waste collection rates, and enacting Derby City Ordinances 1980 and 1997 in violation of K.S.A. 12-194, by using the amount of gross revenues collected by the licensee for rendering or furnishing the service of waste collection as the basis of obtaining franchise fee revenue.

Respectfully submitted,

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BACKGROUND

1. Derby City Ordinance 1980 (Exhibit A in Petition for Declaratory Judgment) was enacted by the Derby City Council on March 24, 2009, with the primary purpose of allowing the City of Derby to franchise residential waste collection with the following title:

> "AN ORDINANCE AMENDING CHAPTER 5.28 OF THE DERBY MUNICIPAL CODE, REGULATING COLLECTION AND TRANSPORTATION OF SOLID WASTE; PROHIBITING COMMERCIAL COLLECTION OR TRANSPORTATION OF RESIDENTIAL REFUSE AND RECYCLABLES EXCEPT PURSUANT TO A CONTRACT WITH THE CITY OR WHEN OTHERWISE PERMITTED HEREUNDER; ESTABLISHING PENALTIES FOR VIOLATION OF SUCH CHAPTER; AMENDING SECTION 8.04.010 OF THE DERBY MUNICIPAL CODE; AND REPEALING ORIGINAL CHAPTERS 5.28 AND 8.12 AND ORIGINAL SECTIONS 8.08.010, 8.08.020, 8.08.060, AND 8.08.200 OF THE DERBY MUNICIPAL CODE."

2. Section 5.28.100 titled "Rates and Charges" in Derby City Ordinance 1980 states:

> "All fees and charges made for collection and transportation of residential refuse and recyclables by the City or a Contractor, including any services rendered incident thereto, shall be established from time to time by resolution."

3. Section 5.28.110 titled "Franchise Fee" in Derby City Ordinance 1980 states:

> "Each Contractor collecting residential refuse or recyclables within the City shall pay a franchise fee for such privilege. The franchise fee therefor shall be established by resolution."

4. On October 27, 2009, the Derby City Council enacted Derby City Ordinance 1997 which is entitled:

"AN ORDINANCE AMENDING CHAPTER 5.28 OF THE DERBY MUNICIPAL CODE, REGULATING ACCUMULATION, STORAGE, COLLECTION AND TRANSPORTATION OF SOLID WASTE AND RECYCLABLES, AND ESTABLISHING PENALTIES FOR VIOLATION THEREOF; AND REPEALING ORIGINAL CHAPTER 5.28 OF SAID CODE AS AMENDED BY ORDINANCE NO. 1980 OF THE CITY." (Exhibit H in prior amendment filing)

5. Section 5.28.100 titled "Rates and Charges" in Derby City Ordinance 1997 states:

> "Customer shall pay such fees and charges for collection and transportation of residential refuse and recyclables, and other services rendered incident thereto, as have been established or approved from time to time by the City."

6. Section 5.28.110 titled "Franchise Fee" in Derby City Ordinance 1997 states:

> "Any Contractor collecting residential refuse or recyclables within the City shall pay to the City a franchise fee for such privilege. The franchise fee therefor shall be established by resolution."

7. On July 30, 2009 the City of Derby, under the power established by Derby City Ordinance 1980, entered into a written contract (hereafter referred to as "Waste Contract") with Waste Connections of Kansas, Inc. (hereafter referred to as "WCI") entitled:

> "AGREEMENT FOR COLLECTION OF RESIDENTIAL REFUSE AND RECYCLABLES, AND OTHER RELATED SERVICES WITHIN THE CITY OF DERBY, KANSAS." (Exhibit I in prior amendment filing)

8. Section 31 A. of the Waste Contract entitled "Franchise Administration Fee" states as

follows:

> "In consideration of this Agreement, WCI will pay to City an amount equal to five percent (5%) of its gross revenues actually collected from customers for all services performed pursuant to this Agreement. Such franchise administration fee shall be paid to the City quarterly, not later than the 30th day of the month next following the close of each quarter."

9. Kathleen Sexton, Derby City Manager, presented a staff report to the Derby City Council regarding Ordinance 1980 on numerous occasions. Per the minutes of Derby City Council meetings on February 24, 2009, March 24, 2009 and April 28, 2009 Ms. Sexton's staff report to the Derby City Council stated the following:

> "The proposed ordinance WOULD NOT ENTAIL ANY DIRECT COSTS to the City." (emphasis added)
>
> "Franchise fee revenue would be available for use as determined by the Council during the annual budget process."

10. The Derby City Council passed a resolution on July 28, 2009 authorizing Kathleen Sexton, Derby City Manager to execute the Waste Contract. By authorizing the execution of the Waste Contact, the Derby City Council authorized the calculation of franchise fee revenue payable to the City of Derby on the basis of five percent (5%) of the gross revenues collected by WCI as stated in Section 31A. of the Waste Contract.

COUNT VII

DERBY CITY ORDINANCES 1980 AND 1997 VIOLATE K.S.A. 12-3004

11. Petitioners hereby incorporate by reference all of the allegations, statements, averments,

and exhibits in paragraphs 1 through 79 as set forth in Petitioners' "Petition for Declaratory Judgment, Writ of Mandamus, Unconstitutionality of Ordinance and Damages" as if fully set forth herein, paragraphs 1 through 48 of the prior "Amendment of Petition for Declaratory Judgment adding Causes of Action for, City Ordinance that Exceeds Police Power, Illegal Implementation of City Ordinance, and Unlawful Delegation of Legislative Authority" filed on November 23, 2009, along with paragraphs 1 through 10 above as stated in this document.

12. Respondents have and continue to deceive the Petitioners and all other persons reading Derby City Ordinances 1980 and 1997 by not including the revenue purpose and rate setting powers contained in sections 5.28.100 "Rates and Charges" and 5.28.110 "Franchise Fee" in the titles of these ordinances. Petitioners contend that these powers exceed the police power of regulation, since "Regulation" is the only operative word in the titles. This failure of Respondents to list these purposes clearly in the titles of the ordinances, voids sections 5.28.100 and 5.28.110 giving them no further force or effect.

13. K.S.A. 12-3004 is entitled "Subject and title of ordinance; amendment" states:

> "No ordinance shall contain more than one subject, which shall be clearly expressed in its title; and no section or sections of an ordinance shall be amended unless the amending ordinance contains the entire section or sections as amended and the section or sections amended shall be repealed."

14. In *Garten Enterprises, Inc. v. City of Kansas City, Kansas*, 219 Kan. 620, 549 P.2d 864 (hereafter "*Garten*"), the Court states at 622:

> "Appellant complains that the title to the ordinance is violative of article 2, section 16 of our state constitution providing that no bill shall contain more than one

subject, which shall be ***clearly*** expressed in its title. This proviso is not applicable to city ordinances (Topeka v. Raynor, 61 Kan. 10, 58 Pac. 557); however, the legislature has established the same proscription with respect to them in K.S.A. 12-3004." (emphasis added).

The *Garten* Court guides us that the review of the constitutionality of the title of a city ordinance shall be based on the same analysis as the review of the title of a state statute under Article 2 Section 16 of the state constitution. The difference in the analysis of a title of a city ordinance and a state statute is that the analysis of the title of a city ordinance is properly based on a violation of the proscription of K.S.A. 12-3004 not Article 2 Section 16 of the state constitution, but the content of the analysis is the same.

15. A case directly on point with Petitioners' charge is *State of Kansas ex rel. Moore v. City of Wichita*, 184 Kan. 196, 335 P.2d 786 (hereafter "*Moore*"). This case dealt with Chapter 96, Laws of 1957, the title of which conferred power on cities to "license" businesses, while the body of the act stated that cities could "license for the purpose of regulation or revenue." Similar to the Petitioners' charge in this matter, the revenue production provision in the body of the act was not clearly identified in the act's title. In analyzing the act the *Moore* Court stated the following at 199:

> "...we are required to hold that the subject matter of that portion of Chapter 96, Laws of 1957 authorizing cities to license for revenue purposes is not clearly expressed in the title in violation of Art. 2, Sec. 16 of our constitution. The purport and effect of that part of the constitutional provision quote above was well stated in State ex rel. Dole v. Kirchner, 182 Kan. 622, 322 P.2d 759, 761:
>
> The constitutions of some states provide merely that the subject of an act may be

'expressed' in the title. Ours provides that the subject be *clearly* expressed. The use of the word 'clearly' is entitled to significance and weight, and it means just what it says. The use of the word requires greater precision and clarity in the title of an act than would be necessary were it omitted, and when, as here, the constitution requires the subject of an act to be *clearly* expressed in its title the subject matter is not to be dubiously or obscurely indicated, but rather, the connection must be so obvious and clear that resort to ingenious aided superior rhetoric will not be necessary in order to ascertain it."

16. The difference between the title and the body of the act in question is outlined by the *Moore* Court at 198:

"The title of the act in question reads:

'An Act conferring power on cities *to license* trades, occupations, businesses and professions, making certain exceptions and repealing section 12-1650 of the General Statutes Supplement of 1955, and sections 13-409, 13-411, 13-910, 13-911, 13-1905, 13-1906, 14-416 and 15-421 of the General Statutes of 1949.' (emphasis supplied.)

The pertinent portion of Section 1 of the act reads:

The governing body of any city shall have the power by ordinance to classify and license for purpose of regulation or revenue any and all trades...and fix the amounts of all *license fees* and provide for their collection and prescribe penalties for the nonpayment thereof * * *.' (Emphasis supplied.)

17. The *Moore* Court states at 199 discussing the purpose of a title of an act:

"...that the purpose of a title is to direct the mind to the contents of the bill so

members of the legislature and the people may be fairly informed and not deceived as to what the act implies (City of Lawrence v. Robb, 175 Kan. 495, 265 P.2d 317), and the more general the language of the title, the broader the subject matter of the act may be, due deference being given to the requirements of Art. 2, Sec. 16 that the subject matter be clearly expressed in the title (State ex rel. v. McCombs, 129 Kan. 622, 284 P. 618).

Despite these well-settled rules, which are reaffirmed and adhered to, we are required to hold that the subject matter of that portion of Chapter 96, Laws of 1957 authorizing cities to license for revenue purposes is not clearly expressed in the title in violation of Art. 2 Sec. 16 of our constitution."

18. The *Moore* Court states at 200:

"Does the power to license occupations, as expressed in the title of the act, authorize the imposition of an occupation tax as the ordinance contemplates? In other words, is the subject of the act clearly expressed in the title? We think it is not. A reading of the title leads to the conclusion that the subject of the act is the licensing of occupations for regulatory purposes. No one could reasonably conclude the act authorizes the imposition of a tax for revenue purposes – nothing in the title so indicates, and the reader is advised of that fact only by referring to the body of the act. References to Section 1 informs the reader that cities are empowered to license occupations either for regulation or for revenue, to be exercised in the alternative (McKay v. City of Wichita, supra; City of Independence v. Hindenach, supra), and fix amounts of license fees and provide for their collection. At most, the title declares that cities are empowered 'to license'

occupations. Generally, speaking, the power *to license* is an exercise of police power (Matheny v. City of Hutchinson, 154 Kan. 682, 121 P.2d 227, 151 A.L.R. 1187; 9 McQuillin, Municipal Corporations, 3rd ed., § 26.29, p.57), but the exaction of an occupation tax is the exercise of the power of taxation and a city cannot in the exercise of its police power levy a tax for revenue purposes." (cites omitted)

19. Again, the *Moore* Court referencing *Duff v. Garden City*, 122 Kan. 390, 251 P. 1091 (hereafter "*Duff*") goes on to say at 200-201:

"In Duff v. Garden City, supra, Mr. Chief Justice Johnson distinguished between the power to license under the police power and the exaction of an occupation tax, as follows:

'A regulation charge is one exacted for a privilege or as a condition precedent to the carrying on of the business, and is an exercise of police power, while an occupation tax is imposed under the power of taxation.' (122 Kan. loc cit. 393, 251 P. 1092).

Where nothing but license is contemplated, as indicated in the title of the act under consideration, the grant of power is only 'to license' or 'to license and regulate' or 'to adopt rules and regulations for licensing under the police power (City of Newton v. Atchinson, 31 Kan. 151, 157, 1 P. 288, 292, 47 Am.Rep. 486), and the power to levy and collect a tax for revenue purposes is not included. Again there is nothing in the title to indicate that the subject of the act includes the power to license for 'revenue' or 'taxation' or to 'levy and collect an occupation tax.' A grant of power to impose an occupation tax will be strictly construed against the

power (McKay v. City of Wichita, supra; 16 McQuillin, Municipal Corporations, 3d ed. § 44.191, pp. 482,483; 1 Cooley on Taxation, 4th ed., § 125, p. 291), and a grant of power to merely *license* with nothing to indicate with certainty that power is given for the purpose of licensing for revenue, the grant will be construed to give power merely to regulate under the police power (9 McQuillin, Municipal Corporations, 26.29, p. 57; Matheny v. City of Hutchinson, supra)."

20. In conclusion the *Moore* Court states at 201:

"While Section 1, when considered alone, purports to authorize cities to license for revenue purposes, that subject is not clearly expressed in the title of the act, consequently, the portion of that section authorizing licensing for revenue purposes violates Art. 2, Sec. 16, and is unconstitutional and void."

21. The titles of Derby City Ordinances 1980 and 1997, as shown in paragraphs 1 and 4 of this document, in no way indicate that certain provisions contained in the body of the ordinances allow the City of Derby to establish waste collection rates without boundaries and produce franchise fee revenue for the City of Derby. The operating word in the titles is "Regulation." Regulation, as the *Duff* Court confirms, simply means the exercise of the police power of the governmental body not the taxing power. The taxing power is the power to fix amounts of fees and rates, or the power to raise revenue. The Petitioners' contend that the title in no way indicates to them, or any reader, that these ordinances exceed the regulatory power of the City of Derby and allow the setting of waste collection rates or the raising of franchise fee revenue for the City of Derby general fund as stated in the body of the ordinances sections 5.28.100 and 5.28.110.

22. Respondents again deceive the Petitioners and any other person reading the Waste

Contract section 31 by titling the section "Franchise Administration Fee." It has been conceded by the Respondents, during meetings of the Derby City Council, that Ordinances 1980 and 1997 do not entail any direct costs of administration to the City of Derby. The title to section 31 of the Waste Contract implies there are direct costs to the City of Derby, and the "franchise administration fee" is simply a mechanism for the reimbursement of direct administrative costs incurred by the City of Derby. Since there are admittedly no direct costs of the Waste Contract to the City of Derby that require reimbursement, and since the entire franchise fee is placed in the City of Derby general fund, this franchise fee certainly exceeds the cost of administration and exceeds the Respondents' police power of regulation. This revenue contribution to the City of Derby general fund which exceeds the police power of regulation, is not clearly mentioned in the titles of Ordinances 1980 and 1997 and is deceptively represented as an administrative fee in the Waste Contract Section 31.

23. The Respondents continue their deception that Ordinances 1980 and 1997 contain a revenue purpose by not itemizing the franchise fee revenue in the billing to customers. Section 31C. of the Waste Contract states:

> "WCI will not separately identify the franchise administration fee in any billing of or correspondence with customers, including but not limited to customer service agreements, bills or invoices."

This action denies customers the ability to ascertain that Derby City Ordinances 1980 and 1997 are revenue measures producing income for the City of Derby contrary to their titles. The ordinance titles do not disclose the fact the ordinances produce franchise fee revenues to the City of Derby which are placed in the general fund. In addition, WCI is

contractually required to keep quiet on the entire franchise fee revenue issue per the Waste Contract. This contract requirement, negotiated by the Respondents, continues the deception of the Petitioners and all other customers and electors by not clearly stating and informing that City of Derby Ordinances 1980 and 1997 not only regulate waste collection but also result in franchise fee revenue to the City of Derby bolstering the general fund.

24. The only conclusion is that Ordinance 1980, and its re–enactment by Ordinance 1997, are revenue measures for the City of Derby by allowing the collection of franchise fee revenue not based on regulatory costs, but as a percentage of revenue collected by WCI. The public has been deceived by the failure to list this revenue production component in the title of the ordinances. The franchise fee revenue, derived under these ordinances, is in excess of the regulatory burden to the city, exceeds the police power of the Respondents, and therefore cannot be claimed to be simply "Regulation." Because the franchise fee revenue provision 5.28.110 in Ordinance 1980, and its re-enactment in Ordinance 1997, is truly a revenue measure exceeding the Respondents' police power of regulation, it must be "clearly" stated in the title of the ordinances to be effective. Because of this failure to list the revenue and price control aspect of the ordinances in their titles, provisions 5.28.100 and 5.28.1110 in the body of Ordinances 1980 and 1997 authorizing rate and charges authority and franchise fee revenue must be declared void as established by K.S.A. 12-3004.

WHEREFORE, the Petitioners pray for an Order of the Court:

A. Declaring the receipt of franchise fee revenues authorized in Derby City Ordinance 1980 and Derby City Ordinance 1997 section 5.28.110 and contained in the contract between

the City of Derby and Waste Connections of Kansas, Inc., are not properly identified in the ordinance titles and therefor violates K.S.A. 12-3004; and

B. Declaring that the rates and charges setting authority in Derby City Ordinance 1980 and Derby City Ordinance 1997 section 5.28.100, is not properly identified in the ordinance titles and therefore violates K.S.A. 12-3004; and

C. Declaring that because franchise fee revenue and rate and charges setting authority are not properly disclosed in the titles of Derby City Ordinances 1980 and 1997 in violation of K.S.A. 12-3004, the franchise fee revenue and rate setting provisions in these ordinances are void and of no force and effect; and

D. Declaring that the Respondents may not collect or retain any franchise fees under Derby City Ordinances 1980 and 1997 and must return these illegal franchise fees to the residential waste customers that have paid such franchise fees; and

E. Per K.S.A. 60-1711, award Petitioners reasonable attorney fees and court costs incurred; and

F. Such other and further relief as this Court deems just and proper.

COUNT VIII

DERBY CITY ORDINANCES 1980 AND 1997 VIOLATE K.S.A. 12-194

25. Petitioners hereby incorporate by reference all of the allegations, statements, averments, and exhibits in paragraphs 1 through 79 as set forth in Petitioners' "Petition for Declaratory Judgment, Writ of Mandamus, Unconstitutionality of Ordinance and Damages" as if fully set forth herein, paragraphs 1 through 48 of the "Amendment of Petition for Declaratory Judgment adding Causes of Action for, City Ordinance that

Exceeds Police Power, Illegal Implementation of City Ordinance, and Unlawful Delegation of Legislative Authority", along with paragraphs 1 through 24 above as stated in this document.

26. K.S.A. 12-194 states:

> "(a) Subject to the provisions of subsections (b) and (c), no city or county shall levy or impose an excise tax or a tax in the nature of excise, other that a retailers' sales tax and a compensating use tax, but the provisions of this section shall not be construed as prohibiting any city from (1) Contracting with a utility for a fixed charge based upon a percentage of gross receipts derived from the service permitted by the grant, right, privilege or franchise to such utility; (2) imposing an occupation tax or license fee for the privilege of engaging in any business, trade, occupation, or profession, or rendering or furnishing any service, but the determination of any such license fee shall not be based upon any amount the licensee has received from the sale or transfer of personal or real property, or for the rendering or furnishing of a service, or on the income of the licensee, (3)..."

27. Waste Contract paragraph 31A., executed under Ordinance 1980 and 1997, calls for the collection of franchise fee revenue, in the amount of five percent (5%) of the gross revenues collected by WCI for the privilege of rendering or furnishing the service of residential waste collection for the entire City of Derby.

28. As stated above, K.S.A. 12-194(a)(2) prohibits the collection of an occupancy tax or license fee for the privilege of engaging in any business, based upon the amount the licensee receives for rendering or furnishing the service. The franchise fee revenue calculation in Derby City Ordinances 1980 and 1997 manifested in section 31A. of the

Waste Contract, is calculated by taking five percent (5%) of the amounts WCI collects. This method of calculation, taking a percentage of the amount collected is clearly prohibited under K.S.A. 12-194(a)(2).

29. Respondents may argue that K.S.A. 12-194(a)(1) applies since residential waste collection is a public utility, which the Petitioners claim is incorrect. The nature of a public utility is that the provider of the utility owns the commodity being delivered and controls the delivery system which is physically connected to the service location. In the case of waste collection, the customer owns the product (trash and recyclables) and transfers their title to the commodity to the waste collector who controls the delivery system. In addition, the removal system is not physically attached to the customer's property. The facts that the customer owns the commodity and the delivery system is not physically attached at the point of service, are significant differences preventing waste collection from being deemed a public utility. Because waste collection is not a public utility, K.S.A. 12-194 (a)(1) is of no force or effect. Therefore, residential waste collection franchise fees collected by a city are subject to K.S.A.12-194(a)(2).

30. Petitioners also argue that residential waste collection is not a public utility as manifested by the action of the Respondents. The Respondents have claimed K.S.A. 12-2101 et seq., under the Article 21 title of "Refuse Collection and Disposal," authorizes them to proceed with the residential waste collection franchise. Kathleen Sexton, Derby City Manager, as reflected in the minutes of the Derby City Council meeting of March 24, 2009 stated:

> "State law (K.S.A. 12-2101 et seq.) authorizes the City to undertake solid waste collection and transportation, either directly or through a contractor."

The Respondents do not claim that K.S.A. 12-2001 et seq., under the Article 20 title of

"Franchises," authorizes them to proceed with the residential waste collection franchise. K.S.A. 12-2001 et seq. has been determined to only apply to public utilities. In *Manor Baking Company v. City of Topeka*, 170 Kan. 292, 225 P.2d 89, the Court stated in the syllabus:

"(1) G.S. 1947 Supp. 12-2001 has application only to public utilities."

By the Respondents' claim of authority to franchise waste collection under K.S.A. 12-2101 et seq. and not under the authority of K.S.A. 12-2001 et seq., the Respondents admit that residential waste collection is not a public utility and therefore the franchise fees collected are not subject to analysis under K.S.A. 12-194(a)(1). Therefore, the Respondents cannot claim a franchise fee for waste collection based on a percentage of gross receipts is permitted under K.S.A. 12-2001 et seq, or K.S.A. 12-194.

31. When applying K.S.A. 12-194(a)(2) to Ordinances 1980 and 1997 and the percentage based franchise fee revenue established in the Waste Contract section 31A. authorized by said ordinances, the only conclusion that can be reached is that the franchise fee revenue calculation based on the percentage collected by the franchisee rendering the service, violates this statutory provision and must be declared illegal and void.

WHEREFORE, the Petitioners pray for an Order of the Court:

A. Declaring that Derby City Ordinances 1980 and 1997 section 5.28.110, establishing franchise fee revenue based on gross revenues of WCI, as agreed in the Waste Contract Section 31A., is in direct violation of K.S.A. 12-194(a)(2); and

B. Declaring the Respondents must not be permitted to collect such franchise fee or license revenue in violation of K.S.A. 12-194(a)(2); and

C. Declaring the Respondents must return any and all sums collected under the franchise fee provision 5.28.110 of Derby City Ordinances 1980 and 1997 to the customers who paid such fee; and

D. Declaring the Respondents refrain from further violation of K.S.A. 12-194(a)(2); and

E. Per K.S.A. 60-1711, award Petitioners reasonable attorney fees and court costs incurred; and

F. Such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

Mark Rouleau (KS # 21314)
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(316) 640-1304; mark46077@yahoo.com

VERIFICATION

I, R. Matthew Joyce, declare as follows:

1. I have read the foregoing "AMENDMENT OF PETITION FOR DECLARATORY JUDGMENT ADDING CAUSES OF ACTION FOR DERBY CITY ORDINANCES 1980 AND 1997 VIOLATING K.S.A.12-3004 AND K.S.A. 12-194," and am familiar with its contents.

2. All facts alleged in the foregoing "AMENDMENT OF PETITION FOR DECLARATORY JUDGMENT ADDING CAUSES OF ACTION FOR DERBY CITY ORDINANCES 1980 AND 1997 VIOLATING K.S.A.12-3304 AND K.S.A.12-194," not otherwise supported by citation to record evidence, exhibits, or other documents, are true to the best of my knowledge.

I declare under the penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct.

Executed this 10th day of December, 2009 at Derby, Kansas.

R. Matthew Joyce

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS

JANICE BASTON	)	
and	)	
R. MATTHEW JOYCE	)	
Petitioners,	)	
vs.	)	
CITY OF DERBY, KANSAS,	)	
a city of the second class, and	)	
KATHLEEN SEXTON,	)	
in her capacity of	)	
Derby City Manager	)	**CASE NO. 09-CV-3598**
Respondents	)	
----------	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of:

AMENDMENT OF PETITION FOR DECLARATORY JUDGMENT ADDING CAUSES OF ACTION FOR DERBY CITY ORDINANCES 1980 AND 1997 VIOLATING K.S.A 12-3004 AND K.S.A. 12-194

was served on as legal representatives of all Respondents:

David M. Rapp, Hinkle Elkouri Law Firm, LLC, 301 N. Main Street, 2000 Epic Center, Wichita, Kansas 67202

By PERSONAL DELIVERY to the above address, addressed to all interested parties as listed above on this 11th day of December, 2009.

The Rouleau Law Firm, P.A.

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