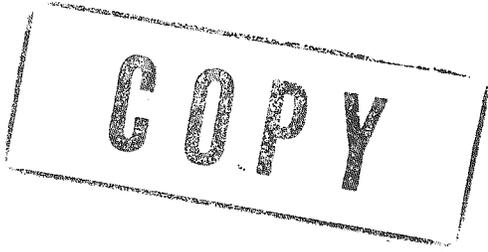


2009 OCT 28 PM 12 51

CLERK OF DIST. COURT  
DISTRICT  
SEDGWICK COUNTY, KS

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

STATE EX REL. JANICE BASTON, )  
and )  
R. MATTHEW JOYCE )  
Petitioners, )  
vs. )  
CITY OF DERBY, KANSAS, )  
a city of the second class, and )  
KATHLEEN SEXTON, )  
in her capacity as )  
Derby City Manager )  
Respondents )



CASE NO. 09-CV-3598

**MOTION FOR THE AMENDMENT OF  
PETITION FOR DECLARATORY JUDGMENT  
ADDING A CAUSE OF ACTION FOR AN  
ILLEGAL CONTRACT ENTERED INTO BY RESPONDENTS  
IN THE IMPLEMENTATION OF DERBY CITY ORDINANCE 1980**

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, in the implementation of Derby City Ordinance 1980, of entering into an illegal contract with Waste Connections of Kansas, Inc., which said contract exceeded their legal authority with respect to franchise compensation to the City of Derby.

The Respondents have agreed to the relief to amend the Petitioner's original complaint as outlined in this motion. Both parties will submit an agreed upon ORDER for the Court's consideration. The Respondents shall have fifteen (15) days to answer or otherwise plead to this amendment of the original petition.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mark L. Rouleau". The signature is written in black ink and is positioned above a horizontal line.

Mark L. Rouleau #21314  
The Rouleau Law Firm, P.A.  
P.O. Box 780001  
Wichita, Kansas 67278-0001  
(316) 640-1304  
[mark46077@yahoo.com](mailto:mark46077@yahoo.com)

## BACKGROUND

1. Derby City Ordinance 1980 was passed by the Derby City Council on March 24, 2009, with the primary purpose of allowing the City of Derby to franchise residential waste collection as enabled by K.S.A. 12-2101 et seq.
2. Kathleen Sexton, Derby City Manager, On February 24, 2009, prior to the Derby City Council's passing Ordinance 1980, presented a staff report to the Derby City Council regarding Ordinance 1980. Per the minutes of that Derby City Council meeting Ms. Sexton stated the following:

“The proposed ordinance WOULD NOT ENTAIL ANY DIRECT COSTS to the City. Indirect costs include staff time associated with the development of the Request for Proposals, staffing the Trash/Recycling Advisory Board, public communications about the transition to a new system, and the ongoing implementation of a curbside recycling program, and development and administration of the contract.” (emphasis added)

“The contractor(s) selected would pay a franchise fee, anticipated to be 5% of gross revenues, to the City. Such fee revenues would offset the cost to the City for developing and maintaining the program.”

“Franchise fee revenue would be available for use as determined by the Council during the annual budget process.”

“The dearth of local regulation has some unwelcome consequences:...Excessive wear and tear on residential streets used by collection trucks representing multiple contractors.”

3. Kathleen Sexton, Derby City Manager, during the March 24, 2009 Derby City Council presented a staff report regarding Ordinance 1980. Per the minutes of that Derby City Council meeting the report presented repeated the statements quoted above in paragraph 2 from the February 24, 2009 Derby City Council meeting.
4. Kathleen Sexton, Derby City Manager, during the April 28, 2009 Derby City Council presented a staff report regarding Ordinance 1980. Per the minutes of that Derby City Council meeting the report presented repeated the statements quoted in paragraph 2 from the February 24, 2009 Derby City Council meeting.
5. Regarding residential solid waste collection and Ordinance 1980 during the Derby City Council meeting of April 28, 2009, Council Member Horyna asked:

“how we as a city will address customer service issues if we experience sub par performance.”

Per the Council meeting minutes, Kathleen Sexton responded:

“...if the council authorizes staff to negotiate a contract there are a lot of details to work out in the contract in this regard. Certainly there will be customer service expectations set in that contract including reporting requirements. She would anticipate the first year of the franchise would have quarterly meetings to review information and make sure we understand and make sure we are all on the same page. After that, we will probably have annual meetings.”

Summarizing Kathleen Sexton’s reply, the extent of city involvement once the franchise is commenced will be four meetings to review information during the first year, and one

annual meeting for each year after the first year of the seven year contract.

6. In a City Council Agenda Report entitled "Ordinance Deferring Effective Date of Solid Waste Ordinance" prepared by Kathleen Sexton and presented at the Derby City Council meeting on July 28, 2009 states:

"The contract includes collection of trash and recyclables at all City owned facilities for NO ADDITIONAL COST and provides that a 5% franchise fee be paid to the City, which would yield approximately \$60,000 per year. Such fee revenue would offset the cost to the City for developing and maintaining the program." (emphasis added)

In exchange for one annual meeting with the contractor to regulate the waste collection franchise, the City of Derby is compensated \$60,000 a year from a franchise fee, along with NO COST solid waste collection at all city facilities, and a material reduction in the wear and tear on residential streets thereby reducing maintenance expenses.

7. Kathleen Sexton states that there is very little for city staff to do under the franchise of residential solid waste.

Per the Derby City Council minutes from the July 28, 2009 meeting:

"Council Member Meidinger asked if there would be any city staff designated as a liaison person to Waste Connections.

Ms. Sexton advised at this point that is her...there will be very little for city staff to do but there will be some routine things like quarterly reports and annual reports and annual meetings, etc."

From this statement it is extremely clear that the burden on the city in regulating the waste collection franchise is small. After the first year, the Derby City Manager expects to hold only one meeting a year with the contractor. The burden to the City of Derby in monitoring the waste collection franchise is significantly smaller than the financial benefit being realized by the City of Derby, the value of which is certain to exceed \$100,000.

8. Ordinance 1980 continues to require license fees payable to the City of Derby in addition to the 5% (\$60,000) franchise fee and free waste collection to city facilities. Section 5.28.1809 states:

“No person, firm or corporation shall, within the city limits, collect or dispose of solid waste unless a permit is first obtained from the city clerk prior to issuance of said license.”

Section 5.28.210 states:

“An annual permit fee as established by resolution of the governing body of the city for each vehicle licensed shall be paid by the collector to the city clerk.”

Therefore, the City of Derby receives funds from license fees to monitor the performance of the solid waste collector in addition to the 5% franchise fee estimated to be \$60,000.

The permit and license fees alone should be sufficient to monitor contractor performance as they have been for years before Ordinance 1980 in regulating the collection of residential solid waste by multiple residential solid waste collectors.

9. Derby City Ordinance 1980 Section 11 Franchise Fee states:

“Each Contractor collecting refuse within the City shall pay to the City a franchise fee for such privilege. The franchise fee therefor shall be established by resolution of the City.”

The franchise fee provision in Derby City Ordinance 1980 does not state a minimum or maximum franchise fee and therefore is subject to unreasonable action on the part of the Derby City Council.

10. The Derby City Council passed a resolution on July 28, 2009 authorizing the execution of contract for residential waste and recyclables collection by Kathleen Sexton, Derby City Manager, with Waste Connections of Kansas, Inc. (hereafter WCI). By authorizing the execution of the residential waste collection contract, the Derby City Council authorized the 5% franchise fee, and the receipt of free solid waste collection for all City of Derby facilities.
11. On July 30, 2009 the Kathleen Sexton, City Manager of the City of Derby entered into a contract (hereafter “Waste Contract”) with WCI for the collection of all residential waste and recyclables in the City of Derby.
12. The Waste Contract specifically states the franchise fee compensation and free services to be provided to the City of Derby by WCI:
  - A. Paragraph 16 of the Waste Contract “Service to City Facilities. WCI shall provide trash and refuse collection service at ***NO CHARGE TO ALL***

**PROPERTIES** used by the City for governmental or proprietary operations, including but not limited to City Hall, Derby Police & Courts Building, Senior Center, Derby Public Library, all Derby Fire stations, Derby Public Works Department, Wastewater Treatment Facility, Derby Recreation Center, all City parks, and the Rock River Rapids Aquatic Park. The frequency and character of such service shall be determined by the City on a reasonable basis.” (emphasis added)

B. Paragraph 31 of the Waste Contract “Franchise Administration Fee. A. In consideration of this Agreement, WCI will pay to the City an amount equal to five percent (5%) of its gross revenues actually collected from customers for all services performed pursuant to this Agreement.”

## **COUNT IV**

### **ILLEGALITY OF CONTRACT**

13. 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, along with paragraphs 1 through 12 as stated in this Motion.
14. K.S.A. 12-2101 et seq. permit a municipality to create a franchise for solid waste collection. Nowhere in these statutes is there authority to charge a franchise fee.

15. In order to obtain guidance on franchise fees it is necessary to glean another industry in which statutes empowered municipalities to create a franchise. The cable television industry was allowed to be franchised under K.S.A. 12-2001 et seq. The statutes in K.S.A. 12-2001 et seq. outline the parameters in determining if a franchise fee is appropriate, unlike the enabling statutes in K.S.A. 12-2101 et seq. for solid waste collection which are silent on the issue of franchise fees. Specifically, K.S.A. 12-2010 requires any form of consideration to a city from a franchise must be reasonable. The last sentence of K.S.A. 12-2010 states:

“Such levies, taxes or fees including all forms of consideration to such city and including initial lump sum payments must be reasonable and shall be generally in conformance with standards, if any, established by federal communications commission regulations or other applicable laws.”

16. There is a lack of solid waste collection franchise case law, but due to the similarity of the issue, cable television case law can provide a guide on franchise fees. In the cable television and waste collection industries situations, a private contractor can be given the franchise for a municipality and is allowed access to public roads to perform the contracted task, and the municipality is in charge of local regulations.

17. Courts have held that the receipt of free services by a municipality in excess of a franchise fee payment from the provider of services under a franchise agreement is

unreasonable. In *Community Antenna Television of Wichita, Inc. V. City of Wichita, Kansas et al.*, 205 Kan. 537; 471 P.2d 360 (1970) (hereafter “*Community Antenna*”) the Court stated at 543:

“We must also agree with the trial court that the provision in the ordinance requiring the payment of a percentage of the income as a franchise privilege and the provision requiring free service to all hospitals, public and parochial schools located within the city and to municipal buildings are unreasonable and void. The measure of the charge and the costs of the free services is not reasonably apportioned to the business carried on measured by the expense to the city in supervising the use of the streets by a CATV system.”

In this case the City of Wichita required the contractor to provide cable television service free of charge to all hospitals, public and parochial schools, and municipal buildings located within the city in addition to the franchise fee. The Court voided that contract because of the free services in addition to the franchise fee were not reasonably apportioned to the cost of regulation.

18. Courts have struck down the receipt of additional benefits to a city when coupled with the franchise fee, the total benefit goes beyond what is reasonably necessary for regulatory purposes. In *Capitol Cable, Inc. v. City of Topeka, Kansas et al.*; 209 Kan. 152; 495 P.2d 885 (1972) (here after “*Capitol Cable*”)the court states at 165:

“When the cost to Cablecom-General of Topeka of these additional benefits to the community are added to the annual fee which it is required to make to the City

under the enabling ordinance, the total fee exacted by the City for administering the CATV system by the City governing body is far beyond what is reasonably necessary for regulatory purposes.”

19. Any fee for licensing or franchise must be reasonable and in tune with the actual expenses incurred by the City in the regulation of the franchise or licensed service. The City of Topeka was seeking free cable service and broadcasting for Washburn University. The *Capitol Cable* Court in reconfirming its decision in the *Community Antenna* case further states at 165:

“One of the major reasons for holding the enabling ordinance of the City of Wichita void (*Community Antenna TV of Wichita, Inc. v. City of Wichita*, supra) was that the charges made by the City for the franchise were excessive and bore no reasonable relationship to the expense and inconvenience to be occasioned by the City. Washburn University is a municipal university deriving the majority of its support from the taxpayers of the City of Topeka. Any financial benefit received by Washburn University as a result of the issuance of the franchise to Cablecom-General of Topeka would inure indirectly to the City and be over and above the annual fee required by the enabling ordinance.”

20. Also in support of the receipt of reasonable fees for the regulation of a franchise, the *Capitol Cable* court further states at 165:

“The annual franchise fee exacted by a city for the issuance of license or franchise

must be reasonable and commensurate with the expense encountered to administer the public aspect of the business licensed or receiving the franchise.”

21. The *Capitol Cable* court struck down the franchise to Cablecom-General claiming the excessive franchise fees were unreasonable by stating at 166:

“Accordingly, ordinance No. 12986, whereby the City of Topeka attempts to grant a franchise to Cablecom-General of Topeka is permeated with arbitrary and unreasonable action on the part of the governing body of the City of Topeka and must be set aside as void.”

22. The franchise fee must not be a revenue measure and should only compensate the City for the costs associated with providing the service which in the present matter is residential waste collection. In *Executive Aircraft Consulting, Inc. v. The City of Newton, Kansas et al.*, 252 Kan.421; 845 P.2d 57 (hereafter “*Executive Aircraft*”) the court states at 427:

“A fee is not a revenue measure, but a means of compensating the government for the cost of offering and regulating the special service, benefit or privilege.”

23. The free waste collection services and franchise fee received by the city as part of the franchise contract with WCI can be interpreted as a tax since the cost savings and revenue are applied to the general fund. The *Executive Aircraft* court cites case law in other states to support its decision that any fees in excess of regulatory requirements are taxes and states at 427:

“...any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit is a tax. On the other hand, a fee is generally regarded as a charge for some particular service. *Dickson, Sheriff v. Jeff. Co. Bd. of Education*. 311 Ky. 781, 786, 225 S.W. 672 (1949).”

“In South Dakota, the distinction between fees and taxes is that taxes are imposed for the purpose of general revenue while license or other fees are ordinarily imposed to cover the cost and expense of supervision or regulation. [Citation omitted.] *Valandra v. Viedt*, 259 N.W. 2d 510, 512 (S.D. 1977).”

The free waste collection services received by the City of Derby reduces general operating costs. The franchise fee of approximately \$60,000 per year is deposited in the general fund and its use is at the discretion of the Derby City Council. The cost savings from free waste collection at city facilities along with the \$60,000 franchise fee and other benefits, have no relation to the costs incurred by the city in the monitoring of the waste collection franchise. Under the legal definition in the cases cited, since the costs savings and franchise fee are for the general benefit of the City of Derby, these amount to taxes imposed on the recipients of waste collection services under the franchise contract.

24. Since the free waste collection services and the 5% franchise fee exceed the cost of monitoring the waste collection franchise, and are for the general benefit of the City of Derby, the amounts above the reasonable monitoring costs are an illegal tax. In *Iroquois*

*Properties et al. v. City of East Lansing*, 160 Mich. App. 544; 408 N.W.2d 495. the court states at 563:

“We believe *Vernor* and *Foreman* hold that a regulatory fee will be construed as an illegal tax only where the revenue generated by the regulation exceeds the cost of the regulation.”

25. In another case, the Michigan court stated in *Bray v. Department of State*, 418 Mich.149, 160; 341 NW2d 92 (1983):

“...to pass the test of a “regulatory fee,” an exaction must not produce revenue in excess of the cost of the regulation.”

This again reiterates the position that the franchise fees and the free waste collection services received by the City of Derby in excess of the cost of regulation of waste collection make Ordinance 1980 a revenue measure.

26. All of these cases indicate that a license fees, regulatory fees and franchise fees are all similar in their treatment under the law. These fees much be reasonably related to the cost of the regulation. If they exceed the cost of regulation they are an illegal tax.

27. The franchise fee to be received and the free services are a revenue measure for the City of Derby. The City Manager’s instruction on the use of the fee proves this point. The City Manager states:

“Franchise fee revenue would be available for use as determined by the Council

during the annual budget process.”

The franchise fee simply goes to the general fund and is applied in whatever way the City Council deems appropriate. Since the burden of the franchise to the City is so small, the franchise fee is outrageously in excess of the costs to the City of Derby associated with the residential waste collection franchise. Therefore, the franchise fees are dumped in the general fund for no specific purpose and in addition, the free waste collection provided to the city is a significant expense reduction in the general fund.

28. Kathleen Sexton, Derby City Manager, stated on July 28, 2009 that there is “very little for city staff to do” with regards to monitoring the solid waste franchise with WCI. For this “very little” work, the City of Derby receives an approximately \$60,000 franchise fee each year, waste collection for free at all city facilities, permit and license fees, and a significant reduction in wear and tear on residential streets. This compensation and cost savings to the city are obviously in excess of the burden placed on the city for maintaining a residential waste collection franchise which will only require Kathleen Sexton, Derby City Manager, or another city representative to meet with the contractor as little as once a year.

29. The benefits to the City of Derby from Ordinance 1980 far exceed the burden to the city in maintaining the residential waste collection franchise. The Ordinance is far from revenue neutral. As stated previously, the franchise fees are being placed in the general fund and “would be available for use as determined by the Council during the annual

budget process.”

30. The only conclusion is that Ordinance 1980 is a revenue measure to the City of Derby by allowing the production of revenue and cost savings in excess of the regulatory burden to the city.

31. The Kansas Supreme Court has ruled that if a law that purports to assess expenses of regulation and supervision shows on its face that some part of the exaction is to be used for other purposes, the police power is exceeded and the law is void. In *Panhandle Eastern Pipe Line Company v. Richard T. Fadely, State Treasurer of Kansas et al.*, 183 Kan. 803, 332 P.2d 568, (hereafter “*Panhandle*”), the Kansas Supreme Court states at 806:

“At the outset, it is clear that under its police power the state may reimburse itself for the costs of otherwise valid regulation and supervision by charging the necessary expenses to the businesses or persons regulated. (*State, ex rel. v. Cumiskey*, 97 Kan. 343, 352, 155 Pac. 47; *Gt. Northern Ry. v. Washington*, 300 U.S. 154, 160, 57 S. Ct. 397, 81 L. Ed. 573.) A statute, however is void if it shows on its face that some part of the exaction is to be used for a purpose other than the legitimate one of supervision and regulation (*Gt. Northern Ry. v. Washington*, supra, pp. 160-161), or if more than adequate remuneration is secured. (*State, ex rel. v. Cumiskey*, supra; *State ex rel., v. Ross*, 101 Kan. 377, 166 Pac. 505).”

32. The plaintiff argued successfully in *the Panhandle* case the transfer \$100,000 from the state corporation commission regulation fees to the general fund was an attempt to raise revenue under the guise of the police power and deprived plaintiff of its property without due process of law, denied it equal protection, was in contravention of the Fourteenth Amendment of the Federal constitution, and violated article 1, sections 1 and 5 of the Kansas Constitution. In commenting on the placing of regulatory fees into the general fund to be used for general expenses and obligations of the State of Kansas the *Panhandle* court states at 808:

“When a regulatory measure openly becomes a revenue enactment, that portion thereof which exacts revenue fails as a valid exercise of police power. We are of the opinion that senate bill No. 425 and the second sentence of sections 2, 3 and 5 of senate bill No. 428 amount to a tax and a revenue measure levied under the guise of a regulatory fee, violate article 11 section 1 of our state constitution, the commerce clause, and the Fourteenth Amendment of the Federal constitution.”

33. As stated previously, the Respondents have stated that under Ordinance 1980 and the contact executed under its authority, the City of Derby is placing the entire 5% franchise fee in the general fund for use as the City Council directs during the annual budget process (see paragraph 2 of this document). Kathleen Sexton, Derby City Manager, has also stated “the proposed ordinance would not entail any direct costs to the City” (see paragraph 2 of this document). These statements clearly indicate that all the benefits to the City of Derby, the 5% franchise fee, free waste collection to all city facilities, and

reduced wear and tear on the streets is in excess of what is required for regulation. Under the Panhandle case, these provisions in Ordinance 1980 and benefits received under the resulting contract must be voided to the extent they exceed what is required for regulation of residential solid waste collection in the City of Derby.

34. Because Ordinance 1980 creates revenue to the city in excess of what is needed for regulation, and thereby exceeds the police power of the City of Derby, Ordinance 1980 should be determined to be invalid or, at a minimum, the franchise fee provision 5.28.110 in Derby City ordinance 1980, needs to be limited to the cost of regulation and any additional financial benefits received by the City of Derby under Ordinance 1980 and related contracts and agreements must be eliminated.

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

- A. Declaring the receipt of a 5% franchise fee and free waste collection services for all city facilities under the City of Derby contract with Waste Connections of Kansas, Inc., is in excess of the amounts necessary and reasonable to enforce and regulate the waste collection franchise;
- B. Declaring that since the receipt of the 5% franchise fee and free waste collection services is over an above the reasonable cost of developing and maintaining the waste collection franchise, the receipt of these funds and services is in excess of the police power of the Respondents;

- C. Declaring the Section 5.28.110 of Derby City Ordinance 1980 calling for a franchise fee, and free waste collection services under a contract with Waste Connections of Kansas, Inc., are in excess of the police power of the City of Derby, and that the Respondents must adjust the franchise fee to be consistent with the burden to the Respondent from regulating the contract for residential waste services with Waste Connections of Kansas, Inc. and not accept any free solid waste collection or other benefits from the contract;
- D. Declaring that the reduction in the franchise fee and the market value of the free waste collection services under the current contract are to be pro-rated back against the cost to all residential waste customers in the City of Derby thereby lowering the cost of residential service for all customers;
- 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.

OR in the alternative:

- G. Declaring the City of Derby must void the existing contract with Waste Connections of Kansas, Inc. for residential franchise waste collection due to franchise fees and the free services to city facilities being in excess of its police power;
- H. Declaring that Section 5.28.110 of Derby City Ordinance 1980 allowing for an unlimited franchise fee is invalid since it allows the City Council to raise revenue in a manner that exceeds its police power;

- I. Declaring the City of Derby must commence a new bidding process and requiring the city not to accept bids in which the franchise fee and benefits from the franchise to the city exceed the reasonable direct cost of monitoring the waste collection franchise;
- J. Per K.S.A. 60-1711, award Petitioners reasonable attorney fees and court costs incurred; and
- K. Such other and further relief as this Court deems just and proper.

**CHANGE IN PETITIONER TITLE**

- 35. The Petitioners hereby amend their name previously stated as “State Ex Rel. Janice Baston and R. Matthew Joyce, Petitioners,” to “Janice Baston and R. Matthew Joyce, Petitioners.”

RESPECTFULLY SUBMITTED,



---

Mark Rouleau (KS # 21314)  
The Rouleau Law Firm, P.A.  
P.O. Box 780001  
Wichita, Kansas 67278-0001  
(316) 640-1304  
[mark46077@yahoo.com](mailto:mark46077@yahoo.com)

## VERIFICATION

I, R. Matthew Joyce, declare as follows:

1. I am an elector of the City of Derby, Kansas.
2. I reside at 218 Mallard, Derby, Kansas.
3. I signed the Petition to enact a City of Derby Ordinance to repeal City of Derby Ordinance 1980.
4. I have read the foregoing Motion for the Amendment of Petition for Declaratory Judgment Adding a Cause of Action for an Illegal Contract Entered into by Respondents in the Implementation of Derby City Ordinance 1980 and am familiar with its contents.
5. All facts alleged in the foregoing Motion for the Amendment of Petition for Declaratory Judgment Adding a Cause of Action for an Illegal Contract Entered into by Respondents in the Implementation of Derby City Ordinance 1980 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 27<sup>th</sup> day of October, 2009 at Derby, Kansas.

  
\_\_\_\_\_  
R. Matthew Joyce

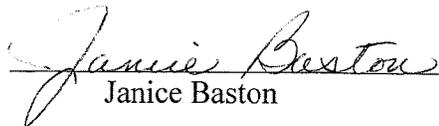
## VERIFICATION

I, Janice Baston, declare as follows:

1. I am an elector of the City of Derby, Kansas.
2. I reside at 1614 N. Woodlawn, Derby, Kansas.
3. I signed the Petition to enact a City of Derby Ordinance to repeal City of Derby Ordinance 1980.
4. I have read the foregoing Motion for the Amendment of Petition for Declaratory Judgment Adding a Cause of Action for an Illegal Contract Entered into by Respondents in the Implementation of Derby City Ordinance 1980 and am familiar with its contents.
5. All facts alleged in the foregoing Motion for the Amendment of Petition for Declaratory Judgment Adding a Cause of Action for an Illegal Contract Entered into by Respondents in the Implementation of Derby City Ordinance 1980 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 26<sup>th</sup> day of October, 2009 at Derby, Kansas.

  
\_\_\_\_\_  
Janice Baston

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

STATE EX REL. JANICE BASTON, )  
and )  
R. MATTHEW JOYCE )  
Petitioners, )  
vs. )  
CITY OF DERBY, KANSAS, )  
a city of the second class, and )  
KATHLEEN SEXTON, )  
in her capacity as )  
Derby City Manager )  
Respondents )  
-----)

CASE NO. 09-CV-3598

**CERTIFICATE OF SERVICE**

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

**MOTION FOR THE AMENDMENT OF PETITION  
FOR DECLARATORY JUDGMENT  
ADDING A CAUSE OF ACTION FOR AN  
ILLEGAL CONTRACT ENTERED INTO BY RESPONDENTS  
IN THE IMPLEMENTATION OF DERBY CITY ORDINANCE 1980**

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 depositing the same in the U.S. Mail, postage prepaid, certified mail, return receipt requested,  
addressed to all interested parties as listed above on this 28<sup>th</sup> day of October, 2009.

The Rouleau Law Firm, P.A.



Mark L. Rouleau  
Kansas Bar # 21314  
P.O. Box 780001  
Wichita, Kansas 67278-0001  
Telephone: (316) 640-1304  
[mark46077@yahoo.com](mailto:mark46077@yahoo.com)  
Attorney for Petitioners