



# 2007 Legislative Wrap-Up Derby, Kansas

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# Session Overview

The 2007 State Legislative Session was a big year for Derby. This year marked the inauguration of Derby's legislative relations program. This is the first time in the City's history that staffing was dedicated to tracking issues and developing relationships with legislators. 2007 also marked the first publication of a Legislative Agenda for the City of Derby and, consequently, its first Legislative Wrap-Up.

The response from legislators was both positive and gratifying. Derby hosted two South Central Kansas Legislative Delegation Coffees. These casual Saturday morn-

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## Legislative Priorities

### Local Ad Valorem Tax Reduction

#### 2007 Position

**Support legislation to reinstate the Local Ad Valorem Tax Reduction (LAVTR) program.**

#### Background

Local Ad Valorem Tax Reduction (LAVTR) is a revenue-sharing program established as a partnership between state and local governments in the 1930s. Beginning in 1991, the State of Kansas started "capping" LAVTR dollars and eventually quit appropriating LAVTR funds altogether by 2003.

In dollars and cents, Derby has lost \$385,000 annually, which is equivalent to approximately 3 mills each year. Not coincidentally, in 2004 the City subsequently raised its levy 2.6 mills for fire protection services required for our growing community of 21,101 people.

#### UPDATE

After years of cities protesting and lobbying for its return, the State legislature finally made promising overtures during the 2007 session about the return of LAVTR by 2010. Both the new gaming bill (SB 66) from this year and the machinery and equipment legislation from last year include a provision for LAVTR's reinstatement in the future.

While the exact amount is yet to be determined, cities should be able to expect some level of reinstatement of LAVTR in the next few years. Even a partial return of LAVTR could have an impact of \$20,000 to \$200,000 on the City's revenue stream. However, now that it's been demonstrated how easy it is to suspend a constitutionally mandated funding source for local governments, most cities are extremely cautious on counting on LAVTR as a long-term or dependable funding source.

ing discussion forums drew legislators into Derby, many of whom hadn't visited in years. Not only did it raise their awareness of Derby's legislative presence, but the community also left a favorable impression. Derby's attendance rivaled that of Legislative Coffees in the Wichita venues.

We continue to foster relationships and open communication with our representatives including Representative Don Myers, Senator Mike Peterson, Senator Phil Journey, Congressman Todd Tiaht, Senator Pat Roberts, and Senator Sam Brownback.

The following Wrap-Up provides an overview of issues monitored thus far in 2007.

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## Clean Indoor Air

### 2007 Position

**Support legislation for a statewide smoking ban in indoor public places and places of employment.**

### Background

Secondhand smoke, or environmental tobacco smoke, is an imminent threat to public health.

Secondhand smoke is responsible for as many as 65,000 American deaths each year (National Cancer Institute). Independent medical studies, including the 2006 report of the U.S. Surgeon General, have found secondhand smoke to have immediate and serious health impacts for all individuals. Ventilation is completely inadequate in removing the health effects of environmental tobacco smoke. No length of exposure is safe. No amount of exposure is safe.

It is not only a public health hazard, but it is also a vocational hazard, especially to young people who work in the hospitality industry.

Government can no longer ignore the imperative to protect public health from environmental tobacco smoke. Government is the only entity that can create the level playing field that business owners need to make the smoke-free transition.

In the absence of state leadership, Derby enacted local regulation on indoor smoking to protect the health of its citizens. The ordinance will go into effect on January 1, 2009. In the interim, Derby is launching a public information campaign to encourage neighboring cities to enact similar regulation. We especially encourage the State of Kansas to protect public health by joining the other 21 states that have already addressed clean indoor air.

### UPDATE

The 2007 session was a hallmark year for clean indoor air. Senator Wysong of Overland Park introduced the inaugural bill providing for a statewide indoor smoking ban. Although it was ultimately assigned to an interim committee for further consideration, the bill was not killed outright and by many accounts it had surprisingly good traction for a "first run." Proponents of the bill are expected to come back with a stronger push during the 2008 session. Indications are that the 2008 Legislative Session will focus heavily on health policies, this issue included.

# Issues Overview

## Eminent Domain

**Position:** Eminent Domain is a fundamental municipal right. Derby supports the use of eminent domain to acquire property for public improvement projects as legitimate and beneficial uses of this authority. We encouraged the delegation to focus on strengthening eminent domain authority for blight remediation. The authority to intervene in a timely and effective fashion to abate blighted property conditions that are clearly a threat to the surrounding neighborhood is imperative. We support statutory safeguards to protect private property interests and encourage our delegation to enhance municipal authority to stop blight.

**UPDATE:** This was a marginal issue this year. A blight bill is still alive in committee (SB 296) and is expected to be revisited next session.

**Departments Affected: Community Development**

**Action Required: None**

## Local Control: Tax and spending limits

**Position:** Derby believes in fair and equal taxation and is committed to keeping property and sales tax rates low. Achieving this goal depends on state leadership in maintaining the tax base. Exemptions from sales tax for special interest groups, regardless of the worthiness of the group's mission, make taxation unfair to other worthy groups and erode the tax base. Exemptions from property taxes for age-based or other special interests also erodes the base and puts pressure on cities to increase the mill levy.

**UPDATE:** There were a number of bills this year that would have established tax and spending limitations in a variety of ways. Most of them never made it out of committee; ultimately none of them survived.

**Departments Affected: Finance**

**Action Required: None**

## Local Control: Rights-of-Way and Franchise Fees

**Position:** Derby opposes legislation that would restrict the ability of cities to control public property and rights-of-way or the ability of cities to franchise entities that use the rights-of-way including the implementation of statewide franchises.

**UPDATE:** This was not an issue at the state level this year. Although the Federal Communications Commission (FCC) adopted a controversial rule earlier this year to regulate video service providers under federal jurisdiction that seemed preemptive in nature, the rule appears not to apply to Kansas. The State previously adopted statewide legislation to regulate video services at the state level. Ironically, time has shown this to be a mixed blessing ... While municipalities would rather franchises be under local control, we would much rather be preempted by the state than by the federal government.

**Departments Affected: Community Development**

**Action Required: None**

## **One-Call Mandatory Participation**

**Position:** Kansas One-Call is a state-administered utility-locating service that provides a universal hotline for property owners and contractors to get utility locates and clearance before they dig. While Derby has considered the issue and will be voluntarily joining One-Call, compelling our participation by mandating it is not only an unfunded mandate but also an unwarranted intrusion on local autonomy. Derby is opposed to State-mandated participation. If the state or federal governments seek to promote particular policy objectives, an appropriate level of funding should accompany such mandates. Otherwise, participation will be compelled by the merits of the programs and services themselves.

### **UPDATE:**

SB 20 was introduced this year which would have required the mandatory participation by all water and sewer utilities in the state one-call system. A compromise was attempted on behalf of cities, but proponents of mandatory participation dug in their heels, and ultimately the bill was kept from passing. It is expected to be revisited during the 2008 session.

**Departments Affected: Community Development; Water Company**

**Action Required: Funding for membership to Kansas One-Call has already been anticipated and accounted for in the 2008 Manager's Recommended Budget.**

## **GASB Post-Employment Benefits**

The accounting guidelines in GASB 43 and 45 raised concerns about funding post-employment benefits for governmental entities. SB 232 specifically authorizes cities to establish trust funds or to participate in multi-employer trust funds, for post-employment benefits. However, it is our understanding that based on the benefits offered by the City, this does not apply to Derby.

**Departments Affected: Finance**

**Action Required: Further study implications to the city**

## **Municipal Court Jurisdiction and Fines**

SB 31 dealt with various issues regarding municipal courts. It provides a legislative fix for a Kansas Supreme Court case dealing with prosecution in municipal court when an individual has prior convictions which would have made the new crime a felony. Under SB 31, municipal court is granted jurisdiction over certain crimes that would otherwise be a felony if heard in district court. In addition, SB 31 allows for municipal courts to charge defendants for the cost of collecting fines.

**Departments Affected: Law**

**Action Required: Further study implications for the City**

## **Prompt Pay for Contractors**

Last year, the Legislature adopted legislation which required prompt pay for contractors when dealing with private contracts. This year, the same concept was applied to public contracts. Under SB 333, construction contracts (not including contracts regarding roads, highways, or bridges) must include certain provisions. Retainage must be 10% or less, and an owner must release the retainage on any undisputed payment due on a constructed project within 30 days (or 45 days with extenuating circumstances after substantial completion of the project) or pay interest at a rate of \$18 per annum.

**Departments Affected: Community Development; Operations; Public Works & Parks; Finance; Law**

**Action Required: Adjust future contractual payment arrangements accordingly**

## KPERS

SB 362 creates a new retirement plan for KPERS-eligible employees hired on or after July 1, 2009. While the bill is estimated to save local governments about a billion dollars between now and the year 2033, the savings would occur after the year 2014. SB 362 would set the employer contribution rate to match the actuarial rate right from the start of the plan. Right now this rate is estimated to be 7.95% for local KPERS employers. This is a rate increase that will cost employers more during the first several years of the plan, but only for those newly hired employees.

The House also added an amendment that would give a one time \$500 payment to current retirees who have been retired for more than 10 years and had more than 10 years of service.

The basics of SB 362 are as follows:

- First day membership (there is currently a 1 year waiting period).
- 5 year vesting (includes those hired before 2009, this is currently set at 10 years).
- 1.75% defined benefit multiplier (this is the same as the current plan).
- Final average salary based on 5 highest years (currently based on the 3 highest).
- Normal retirement age is 65 with 5 years of service or 60 with 30 years of service (eliminates the 85-point rule).
- Early retirement at age 55 with 10 years of service, is no longer “subsidized.”
- Automatic annual 2% COLA starting at age 65 (current plan does not have a COLA).
- Employee contribution rate is set at 6% (currently 4%).
- Employer contribution rate set at actuarial level, (7.95% estimate) but not less than employee rate (4%).
- Expected to save local governments about \$1 billion from now until 2033, and expected to save KPERS State and School groups \$2.6 billion by 2033.

**Departments Affected: Finance; Human Resources**

**Action Required: Including funding for higher employer contributions in Manager’s Recommended 2008 Budget. Further study implications for the City**

## Payroll Direct Deposit

HB 2316 specifically authorized employers to designate the method of delivering payroll. In other words, cities may now require all employees to receive their payroll checks via direct deposit. If the city mandates delivery via direct deposit, we must offer an alternative for employees such as a “payroll card” which is similar to a debit card and is a transaction that is handled by agreement with your financial institution.

**Departments Affected: Finance**

**Action Required: Consider further for adoption**

## Special Assessments

HB 2267 authorizes the use of the KSA 12-6a special assessment law for stormwater projects. This bill provides a method by which a property owner that was not part of the original district for arterial street development to be included at a later date.

**Departments Affected: Community Development**

**Action Required: Further study implications to the City**

## English as the Official Language

HB 2140 establishes English as the official language of the State of Kansas and its political subdivisions. This provides a minimum standard for governmental publications, ultimately removing grounds to sue for discrimination. The legislation still allows cities to publish documents in other languages as needed to communicate with citizens. This bill was sponsored by Derby's own Representative Don Myers.

**Departments Affected: All**

**Action Required: None**

## Address Confidentiality

During the 2006 session, the Kansas Legislature created an address-confidentiality program called "Safe at Home" to be administered through the Secretary of State's office. Safe at Home provides a substitute address for victims of domestic violence, sexual abuse, stalking and trafficking, as well as a free mail-forwarding system for all first-class mail. Safe at Home allows qualified program participants to use this substitute address on all public records in lieu of the residential address required by many other Kansas laws. For many victims of these crimes, Safe at Home allows them to interact on a normal basis with all levels of government, rather than fearing that government records will put their lives in danger.

This law may have implications for the City beyond its direct intent. In an era of heightened personal privacy and security concerns, the City has been asked to consider forgoing its custom of requiring that individuals who address the City Council at public meetings provide their address. Many speakers comply by affiliating themselves with their employer and employer's address. But for those residents who address the Council regarding a personal matter, openly broadcasting a home address may be discomforting. The City is not required to solicit speakers' addresses nor are the addresses used other than as an identifier in the minutes. It is a requirement included in the City Council's Code of Meeting Procedure but was only included in the first place because it was a tradition.

**Parties Affected: City Clerk, Council**

**Action Required: Consider amending the Code of Meeting Procedure to forgo this requirement.**

## Concealed Carry Preemption

After passage of the 2006 concealed carry law, a number of cities including Derby adopted ordinances pursuant to the Act to regulate concealed carry of firearms within their jurisdiction. Legislators took exception to this action by cities and introduced several bills designed to preempt cities from regulating firearms. The final result was HB 2528 which preempts cities from adopting ordinances with regard to individuals who are licensed to carry concealed by the State of Kansas. This bill was vetoed by Governor Sebelius, but the Legislature overrode the veto, and the bill has become law.

Under the provisions of HB 2528, cities are specifically authorized to regulate concealed carry by everyone in public buildings so long as the appropriate signage is in place. In addition, cities may regulate concealed carry by public employees through personnel policies and guidelines.

**Departments Affected: Operations; Public Works & Parks; Human Resources**

**Action Required: Local amendment to the Uniform Public Offense Code (Ord. #1873) should be revised to exempt persons licensed to carry concealed weapons by the State of Kansas.**

# Ongoing Issues

## Federal Preemption of Collective Bargaining Rights

At this time, there is a federal bill pending to which Derby stands opposed. H.R. 980 would mandate collective bargaining rights for all police, fire and emergency medical workers without regard to state laws or constitutions and would establish a precedent for federal interference in all employee-employer relationships in municipal government, preempting Kansas' Public Employer/Employee Relations Act.

Derby is not opposed to collective bargaining at the local government level but we firmly believe that state and local governments are in the best position to determine the nature and extent of collective bargaining rights. We do not believe a federal "one size fits all" solution will improve the working conditions of the services provided by firefighters, police and emergency medical personnel, all of which are conducted in accordance with unique local conditions, governmental structures and revenue systems.

**Departments Affected: Human Resources**

**Action Required: Continue monitoring**

## Funeral protests

This year, the Legislature adopted a measure providing for restrictions on funeral protests. The bill does not outright ban funeral protests, which are protected forms of expression under the First Amendment. Rather, it provides for specific times and locations in which and at which protesters can exercise their freedom of speech while minimizing the emotional impact and security issues on the funeral procession. In August 2006, Derby passed a similar ordinance (Ord. #1856).

Due to the controversial nature of the issue, language was specifically included in the state bill requiring the Kansas Supreme Court to review the legislation and make a ruling on its constitutionality before it becomes law. The Attorney General's Office submitted the bill to the court, and we are awaiting its decision.

**Departments Affected: Law; Police**

**Action Required: Continue monitoring**

## Minimum Wage Increased

Effective July 24, 2007, the federally mandated minimum wage increased from \$5.15 to \$5.85 per hour. In 2008, it then goes to \$6.55 per hour. In 2009, it will go to \$7.25.

This will have no direct impact on the City's current operations. It is not anticipated to affect the recently developed pay matrix. While it has the most potential to affect a small contingent of seasonal workers employed by Public Works & Parks and a few positions at the Derby Public Library beginning in 2009 (these positions pay above the current minimum wage), even this is a negligible impact on the organization's overall outlook.

In a broader perspective, economists argue for and against the likelihood that raising the minimum wage will have a universal effect on inflation. These factors are too general to consider here.

**Departments Affected: Finance; Human Resources**

**Action Required: Consider implications in future budgets and hiring processes. Continue monitoring.**

## Machinery & Equipment Exemption

In 2006, the State Legislature passed a measure that provides a tax incentive to spur commercial investment by phasing out M&E property tax. It was promoted as a statewide economic development initiative.

To mitigate the impact on the local level, the bill provided an “M&E slider” to phase out the revenue stream. However, the final bill contained an error with regard to the distribution formula. During the 2007 session, legislators worked to “fix” the error from last year’s legislation to make sure that the mitigation which was authorized is appropriately distributed (HB 2044).

Starting in calendar year 2009, the slider reimburses the city for a portion of the calculated differential in M&E tax revenue between budget years 2005 and 2008. This begins at a 90% reimbursement in 2009, 70% in 2010, 50% in 2011, 30% in 2012, 10% in 2013, and no reimbursement in 2014 and thereafter.

If the tax exemption works as intended to incent companies to invest in Kansas communities, then the added valuation of expanded and relocated businesses will improve the City’s overall valuation, ideally offsetting the deficit left by the M&E exemption. In the interim, the slider is intended to help ease cities into this shift in revenue.

As we understand it, though, the slider equation uses 2008 as a “freezer” year to calculate the amounts of future reimbursements. Consequently, 2008 will be the first year that new M&E equipment will not be on the tax rolls and the only year of the next five years that existing, depreciating M&E equipment will not be offset by a reimbursement, although neither state nor county officials are able to confirm the exact amount of the impact. We do not believe that the impact will be overly burdensome but we are monitoring developments closely.

**Departments Affected: Finance**

**Action Required: Continue considering implications in future budgets. Continue monitoring.**



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