

IN THE SUPREME COURT OF OHIO

<p>The State of Ohio, Appellant, v. The City of Akron, Appellee.</p>	<p>Case No. 2008-0418</p>
----------------------------------------------------------------------------------------------------------	---------------------------

BRIEF OF AMICUS CURIAE THE CITY OF YOUNGSTOWN IN SUPPORT OF THE APPELLEE THE CITY OF AKRON

IRIS TORRES GUGLUCELLO (0019416)

Director of Law

ANTHONY J. FARRIS (0055695)

Deputy Director of Law

City of Youngstown Department of Law

City Hall of Youngstown

26 S. Phelps St., 4th Floor

Youngstown, OH 44503

Telephone: 330.742.8874

Fax: 330.742.8867

E-mail: irisg@CityofYoungstownOH.com

E-mail: ajf@CityofYoungstownOH.com

SUBODH CHANDRA (0069233) (COUNSEL OF RECORD)

JAIME BOUVIER (0071426)

The Chandra Law Firm, LLC

1265 W. 6th St., Suite 400

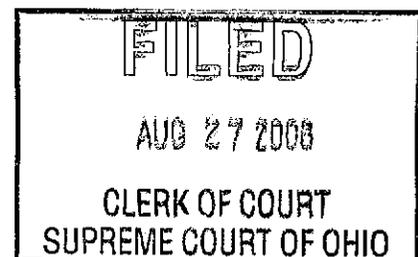
Cleveland, OH 44113-1326

216.578.1700, office

216.578.1800 fax

Subodh.Chandra@StanfordAlumni.org

Counsel for Amicus Curiae the City of Youngstown



MAX ROTHAL (0009431)
DEBORAH FORFIA (0033581) (COUNSEL OF RECORD)
STEPHANIE YORK (0064424)
City of Akron Law Dept.
161 S. High Street, Suite 202
Akron, OH 44308-1655
PH: 330.375.2030
Fx: 330.375.2041

Counsel for Appellees City of Akron and Donald Plusquellic

SUSANNAH MUSKOVITZ (0011457)(COUNSEL OF RECORD)
ROBERT PHILLIPS (0033079)
RYAN LEMMERBROCK (0076915)
Faulkner Muskovitz & Phillips, LLP
820 W. Superior Ave., Suite 900
Cleveland, OH 44113

*Counsel of Record for Appellants Paul Hlynsky, Phil Gauer,
Fraternal Order of Police (Akron Lodge No. 7),
and Akron Firefighters Assoc., (IAFF Local 330)*

NANCY H. ROGERS (0002375)
BENJAMIN MIZER (83089) (COUNSEL OF RECORD)
SHARON JENNINGS (55501)
PEARL CHIN (78810)
MICHAEL STOKES (0064792)
State of Ohio, Office of the Attorney General
Constitutional Offices South
30 East Broad Street, 16th Floor
Columbus, OH 43215-3428
PH: 614.466.8980
FX: 614.466.5087

Counsel for Appellant The State of Ohio

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
I. STATEMENT OF INTEREST OF AMICUS CURIAE THE CITY OF YOUNGSTOWN	1
II. STATEMENT OF THE ISSUES FOR REVIEW	1
A. Under Ohio Const. Art. XVIII, § 3, the home-rule amendment, the City has broad constitutional powers of home rule that include the right to select its employees from among those who agree to reside within the City's limits. The residential qualification of a municipal employee is an exercise of local self-government and not a matter of statewide concern. R.C. 9.481 is not a general law in that it is not a statewide and comprehensive-legislative enactment, does not apply to all parts of the state alike, purports only to limit municipal corporations' legislative power, and does not prescribe a rule of conduct upon citizens generally.	1
B. The General Assembly's general authority under Article II, § 34 to enact laws fixing labor hours, establishing a minimum wage, and for the comfort, health, safety, and general welfare of all employees does not empower the legislature to proscribe municipalities' authority in this area—because the law has nothing to do with those things.	1
C. R.C. 9.481's provisions permitting residency requirements—for some employees and not others, and that vary widely in impact by county—are arbitrary and, as such, are unconstitutional under the Uniformity Clause of the Ohio Constitution, Article II, § 26.	1
D. R.C. 9.481 violates the City's due-process rights.	1
E. R.C. 9.481 infringes the City's freedom to contract with its employees.	1
III. STATEMENT OF FACTS REFLECTING YOUNGSTOWN'S INTEREST IN THE CASE	1
A. Over two decades ago, Youngstown's voters chose to invest their resources in employees with a residential commitment to the City.	1
B. With R.C. 9.481, the State seeks to substitute its own will for the people of Youngstown's.	2
C. R.C. 9.481 ensures that the City's employees will not be as geographically accessible to serve the community.	3
IV. ARGUMENT	6
A. Mutual presumptions of constitutionality.	
B. Ohio Constitution Article II, § 34 regarding general-labor welfare does not authorize R.C. 9.481 and, thus, the statute does not preempt the City's home-rule powers.	6
1. Plain-language analysis.	7
2. <i>Noscitur a sociis</i> analysis: read in its context, "general welfare" applies to working conditions.	8

	<u>Page</u>
3. Legislative-history analysis: § 34 was adopted to grant the General Assembly authority to protect employees from mistreatment.	9
4. Interpretative consequences: to construe § 34 as the State suggests would make its scope absurdly limitless.	10
5. The case law upholding authority under § 34 is limited to situations involving employee economic welfare and working conditions.	11
D. The City's residency qualification is valid under the City's home-rule powers.	15
1. The home-rule amendment to the Ohio Constitution gives the people of the City of Youngstown the power to govern themselves regarding matters of local concern and protects them from special interests who seek and obtain State interference.	14
2. As a State encroachment on home-rule power, R.C. 9.481 fails the Ohio Supreme Court's latest home-rule test in <i>Canton</i> and its progeny.	16
a. Canton prong 1: New R.C. 9.481 conflicts with Youngstown's 22-year-old charter provision and ordinance making residency an employment qualification.	17
b. R.C. 9.481 fails Canton prong 2 because Youngstown's residency qualification is an exercise of local self government rather than of the police power, i.e., is not of statewide concern.	17
c. R.C. 9.481 fails Canton prong 3 because it is not a "general law."	26
i. R.C. 9.481 is not a "statewide and comprehensive enactment;" it is a legislative non-sequitur sandwiched in the middle of other non-sequiturs and is thus not a "general law" that overcomes the City's home-rule powers.	27
ii. R.C. 9.481 does not operate uniformly throughout the State and thus is not a "general law" as Canton requires.	28
iii. R.C. 9.481 does not set forth police, sanitary, or similar regulations, but just purports to grant and limit the power of municipalities to do the same, and is thus not a "general law" as Canton requires.	28
iv. R.C. 9.481 does not prescribe a rule of conduct on citizens generally, and is thus not a "general law" as Canton requires.	29
3. Courts have held numerous other issues relating to municipal employment, like the residency qualification, to be within municipal home rule's scope.	30
E. R.C. 9.481 violates the Ohio Constitution's Uniformity Clause.	32
F. R.C. 9.481's arbitrary provisions violate due process.	35

	<u>Page</u>
G. R.C. 9.481 infringes the City's freedom to contract.	36
VI. CONCLUSION	37
PROOF OF SERVICE	39
APPENDIX	41
1. Mahoning County Board of Elections Certificate of Results of Election on 2. Question or Issue dated Nov. 21, 1986	2
2. Youngstown Charter Section 52(c)	6
3. Youngstown Codified Ordinance Section 163.37	7
4. Copy of Affidavit of Jennifer Lewis originally filed in Mahoning Common Pleas Court	9
5. <i>Where to Live, Where to Work</i> , YOUNGSTOWN VINDICATOR, July 16, 2006	11
6. Affidavit and Report of Professor Robert Simons of Maxine Goodman Levin College of Urban Affairs at Cleveland State University, "Effect of Rescinding City Employee Residency Requirements on the City of Youngstown: Economic and Fiscal Impacts" (filed in Mahoning County Common Pleas Court and part of the record before the 7 th District Court of Appeals	14
7. The Law of Municipal Corporations Sec 45.32 (McQuillen, ed. 2002)	77
8. Managing Fire and Rescue Services 121 (Compton, ed. 2002)	92
9. Fire Protection Handbook 7-18 (Cote, 19 th ed. 2003)	107
10. NFPA 1710 Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments (NFPA 2004)	111

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS

Oh. Const. Art. II, § 26	1, 8, 32 – 34
Oh. Const. Art. II, § 28.	36
Oh. Const. Art. II, § 34.	1, 6-15
Oh. Const. Art. XVIII, § 3.	1, 15, 29, 30
Ohio Const. Art. XVIII, § 7	28
U.S. Const. Art. I, § 10.	11, 33

STATUTES

R.C. 9.481 et seq.	1-34
Legislative Analysis, Sub. S.B. 126, Notes 126 th General Assembly.	24
R.C. 2701.04	34
R.C. 3.15	34
R.C. 3301.03	34
R.C. 733.262	34
R.C. 735.01	34
R.C. 735.271	34
R.C. 735.31	34
R.C. 737.01	34
R.C. 737.15	34
R.C. 9.50	27

CASE LAW

<i>Am. Ass'n of Univ. Professors v. Central State Univ.</i> (1999), 87 Ohio St.3d 55	12
<i>American Fin. Servs. Assn. v. City of Cleveland</i> (2006), 112 Ohio St.3d 170.	15-17
<i>Andre v. Trustees of Maywood</i> (7 th Cir. 1977), 561 F.2d 48.	13
<i>Austintown Twp. Bd. of Trustees v. Tracy</i> (1996), 76 Ohio St.3d 353.	33
<i>Buckley v. City of Cincinnati</i> (1980), 63 Ohio St.2d 42.	25
<i>Canton v. State</i> (2002), 95 Ohio St.3d 149, 2002-Ohio -2005.	16, 24, 27, 30, 33
<i>Canton v. Whitman</i> (1975), 44 Ohio St.2d 62.	16
<i>Cincinnati, Wilmington & Zanesville RR Co. v. Commrs. of Clinton Cty.</i> (1852), 1 Ohio St. 77.	26
<i>City and County of Denver v. Colorado</i> (Colo. 1990), 788 P.2d 764.	20, 23
<i>City of Bay Village Civil Serv. Comm'n</i> , 28 Ohio St. 3d 210	30-32
<i>City of Cleveland v. City of Shaker Heights</i> (1987), 30 Ohio St.3d 49.	18, 34
<i>City of Cleveland v. State of Ohio</i> , 2008 WL 2252542, 2008 Ohio 2655	6-11,34

	<u>Page</u>
<i>City of Columbus v. Molt</i> (1973), 36 Ohio St.2d 94.	29
<i>City of Dublin v. State</i> (Franklin Comm. Pls. 2002), 118 Ohio Misc.2d 18.	26
<i>City of Kettering v. SERB</i> (1986), 26 Ohio St.3d 50.	17,30-32,38
<i>City of Lima v. State of Ohio</i> (3 rd Dist. Dec. 3, 2007), No. 1-07-21, 2007 WL 4248278, 2007-Ohio-6119.	6-11, 17, 27, 28,29
<i>City of Reading v. Pub. Utils. Comm'n of Ohio</i> (2006), 109 Ohio St.3d 193.	23
<i>City of Rocky River v. State Employment Relations Bd.</i> (1989), 43 Ohio St.3d 1	10,11
<i>City of St. Bernard v. SERB</i> (1 st Dist. 1991), 74 Ohio App.3d 3	14
<i>Clermont Envt'l Reclamation Co. v. Wiederhold</i> (1982), 2 Ohio St.3d 44.	23, 26
<i>Cleveland Elec. Illuminating Co. v. Painesville</i> (1968), 15 Ohio St.2d 125.	17
<i>Columbus v. Teater</i> (1978), 53 Ohio St.2d 257.	17
<i>Comerford v. The Jones & Laughlin Steel Corp.</i> (1959), 170 Ohio St. 117.	11
<i>Desenco v. City of Akron</i> (1999), 84 Ohio St.3d 535, 1999-Ohio-368	33
<i>DeVennish v. City of Columbus</i> (1991), 57 Ohio St.3d 163	11
<i>Fitzgerald v. City of Cleveland</i> (1913), 88 Ohio St. 228.	30
<i>Fraternal Order of Police v. City of Dayton</i> (S.D. Ohio Apr. 23, 1990), No. C-3-89-367, 1990 U.S. Dist. LEXIS 5356, 1990 WL 1016521.	25
<i>Fuldauer v. City of Cleveland</i> (1972), 32 Ohio St.2d 114.	12, 13, 25
<i>Garcia v. Siffrin Residential Assn.</i> (1980), 63 Ohio St.2d 259.	27, 30
<i>Gordon v. Lewiston Hosp.</i> (M.D. PA 2003), 272 F.Supp.2d 393	4
<i>Gusewelle v. City of Wood River</i> (7 th Cir. 2004), 374 F.3d 569.	20
<i>Harsney v. Allen</i> (1953), 160 Ohio St. 36.	31
<i>Hausman v. City of Dayton</i> (1995), 73 Ohio St.3d 671.	35
<i>Hegyi v. City of Bedford</i> (8 th Dist. May 10, 1979), No. 38745, 1979 WL 210145,1979 Ohio App. LEXIS 9005.	12
<i>Linndale v. State</i> (1999), 85 Ohio St.3d 52.	27, 29
<i>Lochner v. New York</i> (1905), 198 U.S. 45	6
<i>Lorain City Board of Education v. SERB</i> (1988), 40 Ohio St.3d 257.	13
<i>McCarthy v. Philadelphia Civil Service Comm.</i> (1976), 424 U.S. 654.	12
<i>Mominee v. Scherbarth</i> (1986), 28 Ohio St.3d 270.	35
<i>Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma</i> (1980), 61 Ohio St.2d 375.	6, 15, 31
<i>Ohio Ass'n of Pub. Sch. Employees, Chapter No. 471 v. City of Twinsburg</i> (1988), 36 Ohio St. 3d 180.	22, 24
<i>Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted</i> (1992), 65 Ohio St.3d 242.	16, 26
<i>Ohio Edison Co. v. Power Sitting Comm'n of Ohio</i> (1978), 56 Ohio St.2d 212.	36
<i>Potts v. Catholic Diocese of Youngstown</i> (7 th Dist. 2004), 159 Ohio App.3d 315.	6
<i>Put-in-Bay Island Taxing Dist. Auth. v. Colonial, Inc.</i> (1992), 65 Ohio St.3d 449.	30
<i>Quigley v. Vill. Of Blanchester</i> (12 th Dist. 1968), 16 Ohio App.2d 104.	12, 13,20,23
<i>Schneiderman v. Sebastien</i> (1929), 121 Ohio St. 80.	25
<i>Senn v. City of Cleveland</i> (8 th Dist. Feb. 24, 2005), No. 84598, 2005 Ohio App. LEXIS 744, 2005 WL 428764, 2005-Ohio-765.	25
<i>State ex rel. Bardo v. City of Lyndhurst</i> (1988), 37 Ohio St.3d 106.	15, 30

	<u>Page</u>
<i>State ex rel. Bd. of Comm. Mill Creek Metro. Park Dist. v. Tablack</i> (1999), 86 Ohio St.3d 293.	23, 24
<i>State ex rel. Bd. of Trustees of Police and Firemen's Pension Fund v. Bd. of Trustees of Police Relief, and Pension Fund of Martins Ferry</i> (1967), 12 Ohio St.2d 105.	11
<i>State ex rel. Bednar v. City of North Canton</i> (1994), 69 Ohio St.3d 278.	30
<i>State ex rel. Bishop v. Bd. of Educ.</i> (1942), 139 Ohio St. 427	6
<i>State ex rel. Canada v. Phillips</i> (1958), 168 Ohio St. 191.	30
<i>State ex rel. Dayton Fraternal Order of Police, Lodge No. 44 v. SERB</i> (1986), 22 Ohio St.3d 1.	33
<i>State ex rel. Dispatch Printing Co. v. Johnson</i> (2005), 106 Ohio St.3d 160, 2005-Ohio-4384.	13
<i>State ex rel. East Cleveland Ass'n of Firefighters, Local 500 v. City of East Cleveland</i> (1988), 40 Ohio St.3d 222.	30
<i>State ex rel. Evans v. Moore</i> (1982), 69 Ohio St.2d 88.	17, 23
<i>State ex rel. Frankenstein v. Hillenbrand</i> (1919), 100 Ohio St. 339.	30
<i>State ex rel. Gordon v. Barthalow</i> (1948), 150 Ohio St. 499.	25
<i>State ex rel. Hackley v. Edmonds</i> (1948), 150 Ohio St. 203.	18
<i>State ex rel. Herman v. Klopfleisch</i> (1995), 72 Ohio St.3d 581	7
<i>State ex rel. Lynch v. Cleveland</i> (1956), 164 Ohio St. 437.	30
<i>State ex rel. Meyers v. City of Columbus</i> (1995), 71 Ohio St.3d 603.	30
<i>State ex rel. Mullin v. City of Mansfield</i> (1971), 26 Ohio St.2d 129.	28
<i>State ex rel. Regetz v. Cleveland Civil Serv. Comm'n</i> (1995), 72 Ohio St.3d 167.	30
<i>State ex rel. Reuss v. City of Cincinnati</i> (1 st Dist. 1995), 102 Ohio App.3d 521.	12
<i>State ex rel. Shkurti v. Withrow</i> (1987), 32 Ohio St.3d 424.	14, 26
<i>State ex rel. Stanton v. Powell</i> (1924), 109 Ohio St. 383.	33
<i>State ex rel. Vukovich v. Youngstown Civil Serv. Comm'n</i> (1982), 69 Ohio St.2d 16.	30
<i>State ex rel. Zupancic v. Limbach</i> (1991), 58 Ohio St.3d 130.	33
<i>State of Ohio v. City of Akron</i> (9 th Dist. Jan. 9, 2008), No. 23660, 2008 WL 81506, 2008-Ohio-38.	6, 10, 11, 12, 29
<i>State Pers. Bd. of Review w. City of Bay Village Civil Serv. Comm'n</i> (1986), 28 Ohio St.3d 214.	16, 17, 18,32
<i>State v. Burkhalter</i> (6 th Dist. 2006), No. L-05-1111, 2006-Ohio-1623, 2006 WL 832677.	4
<i>State v. Iden</i> (5 th Dist. 1942), 71 Ohio App. 65.	13
<i>State v. Scott</i> (7 th Dist. 1965), 3 Ohio App.2d 239	4
<i>Strain v. Southerton</i> (1947), 148 Ohio St. 153.	11
<i>United Broth. Of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 377 v. City of Youngstown</i> (1980), 64 Ohio St.2d 158.	31
<i>Unracht v. Fikri</i> (W.D. PA 2006), 454 F.Supp.2d 289.	4
<i>Vill. of Perrysburg v. Ridgway</i> (1923), 108 Ohio St. 245.	15
<i>Village of Beachwood v. Bd. of Elections of Cuyahoga Cty.</i> (1958), 167 Ohio St. 369.	22
<i>Village of West Jefferson v. Robinson</i> (1965), 1 Ohio St.2d 113.	26-30

	<u>Page</u>
<i>Vincent v. Elyria Bd. of Educ.</i> (9 th Dist.1966), 7 Ohio App.2d 58.	11
<i>Wainwright v. Lake Shore & Michigan Southern Railway Co</i> (1901), 11 Ohio C.D. 530, 1901 WL 690	4
<i>Wardwell v. Bd. of Educ.</i> (6 th Cir. 1976), 529 F.2d 625.	12, 22
<i>Wessell v. Timberlake</i> (1916), 95 Ohio St. 21.	36
<i>Xenia v. Schmidt</i> (1920), 101 Ohio St. 437	6
<i>Youngstown v. Evans</i> (1929), 121 Ohio St. 342.	27
<i>Zimmerman v. Rockford Stone Co.</i> (Van Wert Comm. Pls. 1963), 93 Ohio Law Abs. 47, 196 N.E.2d 474, 475.	4

I. STATEMENT OF INTEREST OF THE AMICUS CURIAE THE CITY OF YOUNGSTOWN

The City of Youngstown (“the City”) has a residency qualification for employment that parallels Akron’s. A similar challenge by the City is stayed before the 7th District Court of Appeals pending resolution of this case. Accordingly, and as explained more fully in Section III, below, the City has a significant interest in the outcome of this matter.

II. STATEMENT OF THE ISSUES FOR REVIEW

R.C. 9.481 is unconstitutional for the following reasons:

- A. Under Ohio Const. Art. XVIII, § 3, the home-rule amendment, the City has broad constitutional powers of home rule that include the right to select its employees from among those who agree to reside within the City’s limits. The residential qualification of a municipal employee is an exercise of local self-government and not a matter of statewide concern. R.C. 9.481 is not a general law in that it is not a statewide and comprehensive-legislative enactment, does not apply to all parts of the state alike, purports only to limit municipal corporations’ legislative power, and does not prescribe a rule of conduct upon citizens generally,
- B. The General Assembly’s general authority under Article II, § 34 to enact laws fixing labor hours, establishing a minimum wage, and for the comfort, health, safety, and general welfare of all employees does not empower the legislature to proscribe municipalities’ authority in this area—because the law has nothing to do with those things,
- C. R.C. 9.481’s provisions permitting residency requirements—for some employees and not others, and that vary widely in impact by county—are arbitrary and, as such, are unconstitutional under the Uniformity Clause of the Ohio Constitution, Article II, § 26,
- D. R.C. 9.481 violates the City’s due-process rights, and
- E. R.C. 9.481 infringes the City’s freedom to contract with its employees.

III. FACTS REFLECTING YOUNGSTOWN’S INTEREST IN THE CASE.

- A. Over two decades ago, Youngstown’s voters chose to invest their resources in employees with a residential commitment to the City.**

The City of Youngstown is a charter municipality that provides essential services to its

residents, including police and fire protection, public-health services, snow removal, waste management and recycling, water services, building inspection and enforcement, economic development, and community development.

On November 4, 1986, Youngstown's voters, by an overwhelming 74% vote, amended their charter to require that persons seeking to become city employees be, or agree to become, residents of the City.¹ The Charter provision, § 52(C) provides that "All employees, elected officials and all appointees to commissions or boards shall be residents and domiciled in the City of Youngstown."² Youngstown Codified Ordinance § 163.37 underscores the residency qualification for employment: "All employees of the City shall reside within the City limits thereof, except temporary employees where the work engaged in may require special skill and expert knowledge."³

The residency qualification comes as no surprise to those who wish to work for the City's government. They are informed about the residency qualification before they accept employment.⁴ As a result, for over 20 years, the City of Youngstown has chosen the City's public servants from among those already living within the City or those willing to move in and be a part of it.

B. With R.C. 9.481, the State seeks to substitute its own will for the people of Youngstown's.

With R.C. 9.481, effective May 1, 2006, the General Assembly sought to abolish the benefits to the City from having its employees live within the City. This section provides that a

¹ See Mahoning County Board of Elections Certificate of Result of Election on Question or Issue dated Nov. 21, 1986 (attached as Appendix 1).

² Youngstown Charter § 52(C) (attached as Appendix 6).

³ Y.C.O. § 163.37 (also contained in Appendix 7).

⁴ Copy of affidavit of Jennifer Lewis originally filed in Mahoning Common Pleas Court in residency case now before the 7th District Court of Appeals (attached as Appendix 9).

municipality cannot “require any of its employees, as a condition of employment, to reside in any specific area of the state.”⁵ The statute insists that “employees of political subdivisions of this state have the right to reside any place they desire.”⁶ Yet the statute then admits the problem of “adequate response time . . . to emergencies or disasters” and purports to grant municipalities the right to require “certain employees” to live within the municipality’s county or an adjacent county.⁷

To ensure adequate response time by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political division may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state.⁸

No municipal-residency qualification, therefore, is valid under this statute unless it allows permanent, full-time municipal employees to live in any Ohio county adjacent to the municipality’s county.

C. R.C. 9.481 ensures that the City’s employees will not be as geographically accessible to serve the community.

By its own terms, the impact of the adjacent-county residency limitation that R.C. 9.481 permits varies by county. Ohio counties vary greatly by size and shape in relation to one another. Municipal employees of cities that border large counties may live further from their employer than employees who work for cities in smaller counties. For example, Mahoning

⁵ R.C. 9.481(B)(1).

⁶ Id. at 9.481(C).

⁷ Id. at 9.481(B)(2)(b).

⁸ Id.

County, which includes the City, spans 415 square miles.⁹ It is bordered by Trumbull County to the north, Portage and Stark Counties to the west, and Columbiana County to the south. Stark County, to the southwest, is even larger than Mahoning, covering 576 square miles.¹⁰ The average expected travel time between Wilmot, Ohio, located in Stark County, to Youngstown is about one hour and 36 minutes, not taking into account the fact that this is one of the Ohio's snowiest regions.¹¹ Travel from Canton to Youngstown is hardly better, at about one hour and 13 minutes.¹²

Travel times to Youngstown from locations in other adjacent counties, Trumbull (616 sq. miles), Portage (492 sq. miles), and Columbiana (532 sq. miles) are also high:

- 49 minutes from East Liverpool, Ohio in Columbiana County,¹³
- 47 minutes from Streetsboro in Portage County,¹⁴
- 48 minutes from Mesopotamia in Trumbull County.¹⁵

⁹ Available at <http://quickfacts.census.gov/qfd/states/39/39099.html> (last accessed Aug. 20, 2008).

¹⁰ Available at <http://quickfacts.census.gov/qfd/states/39/39151.html> (last accessed Aug. 20, 2008).

¹¹ The Court may take judicial notice of the mileage and timing between Ohio cities. *See State v. Burkhalter* (6th Dist. 2006), No. L-05-111, 2006 WL 832677, 2006-Ohio-1623 at ¶ 18 (“The judge may inform himself as to the facts of geography, such as the navigable character of a river, the distance between two points, or a location of a given place within the jurisdiction, by resort to * * * public documents, maps, etc.”) (quoting *State v. Scott* (1965), 3 Ohio App.2d 239, 243); *Zimmerman v. Rockford Stone Co.* (Van Wert Comm. Pls. 1963), 93 Ohio Law Abs. 47, 196 N.E.2d, 474, 475 (“It is generally held that the law will take judicial notice of geographical locations. . . . This is the rule followed in Ohio.”); *Wainwright v. Lake Shore & Michigan Southern Railway Co.* (1901), 11 Ohio C.D. 530, 1901 WL 690, Syllabus ¶ 2 (“A court may take judicial notice of the map of a city in order to determine the distance between certain points on a railroad track within its limits.”). These approximations were obtained through www.mapquest.com (last accessed Mar. 18, 2007). *See Unrucht v. Fikri* (W.D. PA 2006), 454 F.Supp.2d 289, 310 at n.11 (taking judicial notice of distances using MapQuest); *Gordon v. Lewiston Hosp.* (M.D. Pa 2003), 272 F.Supp.2d 393, 429 at n.34 (taking judicial notice of driving distances disclosed on MapQuest).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Even though the City is also located just 17 miles from Sharon, Pennsylvania,¹⁶ under R.C. 9.481 the City may limit employees' residency to adjacent Ohio counties but could not allow its employees to reside in Sharon.¹⁷

Municipal employees are different than employees for most private corporations. Their work is to provide public service to a community. And already, R.C. 9.481 has resulted in Youngstown personnel placing themselves further from the City they need to serve. Youngstown police patrolman Daniel Tickerhoof, for example, has relocated to Canal Fulton, in adjacent Stark County. That is more than an hour and fifteen minutes away from the City, assuming no backups on orange-barrel-ridden I-76 through Akron or I-77 through Canton¹⁸—making it more difficult for Patrolman Tickerhoof to respond to emergencies in Youngstown.

A recent professionally conducted survey of City employees revealed that if the residency qualification disappeared, 60% of City employees would leave within seven years—42% in the first year alone.¹⁹ Of those hired in future years, 67% could be expected to live elsewhere rather than among the City residents to whom they are supposed to be accessible and serve.²⁰ In the trial court below, the State of Ohio never contested the study's validity.

Four Ohio courts of appeal, in decisions directly on point arising from the cities of Lima,

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See R.C. 9.481.

¹⁸ *Where to live, where to work*, YOUNGSTOWN VINDICATOR, July 16, 2006 (attached as Appendix 11); www.mapquest.com (last accessed Mar. 18, 2007).

¹⁹ Copy of affidavit and Report of Professor Robert Simons of Maxine Goodman Levin College of Urban Affairs at Cleveland State University, "Effect of Rescinding City Employee Residency Requirements on the City of Youngstown: Economic and Fiscal Impacts" at 12–13 (original filed in Mahoning County Common Pleas Court and part of record before 7th District court of appeals; copy attached as Appendix 14).

²⁰ *Id.*

Akron, Cleveland, and Toledo agree that R.C. 9.481 is unconstitutional.²¹

V. ARGUMENT

A. Mutual presumptions of constitutionality.

“It is firmly established that legislative enactments, whether of a municipality or state, have a strong presumption of constitutionality.”²² Thus, R.C. 9.481 should receive no higher degree of deference than does the City’s residency qualification for employment. It is this Court’s role to review the enactments and determine which one “transcends the limits of legislative authority.”²³ As shown below, the General Assembly, by enacting R.C. 9.481, transcended its limits of legislative authority and infringed upon municipalities’ home-rule powers.

B. Ohio Constitution Article II, § 34 regarding general-labor welfare does not authorize R.C. 9.481 and, thus, the statute does not preempt municipalities’ home-rule powers.

Under Article II, § 34, the State may pass laws “fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees” Section 34 was a *Lochner*-era reform, a response to the notorious U.S. Supreme Court case that struck down worker-safety regulations as violating due process.²⁴ Section 34 expressly provides that “no other provision of the constitution shall impair or limit

²¹ *City of Cleveland v. State of Ohio* (8th Dist. Jun. 2, 2008), Nos. 89486, 89565, 2008 WL 2252542, 2008 -Ohio-2655; *City of Toledo v. State of Ohio* (6th Dist. Apr. 25, 2008, No. L-07-1261, 2008 WL 1837256, 2008 -Ohio- 1057; *State of Ohio v. City of Akron* (9th Dist. Jan. 9, 2008), No. 23660, 2008 WL 81506, 2008 -Ohio- 38; *City of Lima v. State of Ohio* (3d. Dist. Dec. 3, 2007), No. 1-07-21, 2007 WL 4248278, 2007 -Ohio- 6119.

²² *Northern Ohio Patrolmen’s Benevolent Ass’n v. City of Parma* (1980), 61 Ohio St. 2d 375, 377 (emphasis added) (citing *Xenia v. Schmidt* (1920), 101 Ohio St. 437, syl. 1 (“A legislative act is presumed in law to be within the constitutional power of the body making it, whether that body be a municipal or a state legislative body.”)).

²³ *State ex rel. Bishop v. Bd. of Educ.* (1942), 139 Ohio St. 427, 438.

²⁴ *Lochner v. New York* (1905), 198 U.S. 45.

th[e] power” granted by § 34.²⁵ Thus, if it applied, it would trump even home-rule powers. As explained below, however, § 34 does not authorize R.C. 9.481.

In *Lima*, the appeals court held that “Section 34’s language, legislative history, and case law support a more limited grant of authority than the state presents.”²⁶ As explained more fully below, municipal employees’ residency choices do not relate to employee “hours,” “minimum wages,” “comfort,” “health,” or “safety” issues. And, they do not impact employees’ “general welfare”—the only remaining § 34 subject matter. Applicants and employees of the City must decide whether they are interested in working for the City and willing to live in the City. This decision does not impact their “general welfare.”

1. Plain-language analysis.

The *Lima* court began by analyzing § 34’s plain language. *Lima*, like Youngstown here, had raised the issue of whether the term “all employees” refers to “employees acting within the scope of their employment (i.e., within the working environment)” or “to the status of being an employee, which transcends any particular locus.”²⁷

Words used in the Constitution are to be construed according to their usual or customary meaning.²⁸ Citing various dictionary definitions of “employee,” the *Lima* court did not find plain-language analysis to be useful. It, instead, determined the meaning of “employees” by looking to the words immediately surrounding it: a *noscitur a sociis* analysis.²⁹

²⁵ OHIO CONST. art. II, § 34; *cf. Am. Ass’n of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St. 3d 55 (finding that § 34 authorizes a state-law standard for public-university-faculty workloads, but proceeding to analyze the law’s constitutionality on equal-protection grounds).

²⁶ *Lima* at ¶ 24.

²⁷ *Id.* at ¶ 28.

²⁸ See *State ex rel. Herman v. Klopfleisch* (1995), 72 Ohio St.3d 581, 584; *Akron* at ¶ 17.

²⁹ *Lima* at ¶¶ 29–31.

2. *Noscitur a sociis* analysis: read in its context, “general welfare” applies to working conditions.

The *Lima* court stated that “[w]hen the meaning of a word or phrase is unclear, the statutory doctrine of *noscitur a sociis* instructs a reviewing court to determine its meaning by the words immediately surrounding it.”³⁰ (“*Noscitur a sociis*” means “a word is known by the company it keeps.”³¹) In this respect, the appeals court held, § 34’s “general-welfare” clause (the third clause in the section) must be read in its context, “consistent” with the other clauses concerning hours and wages. Accordingly, the *Lima* appeals court agreed that such a reading would grant the General Assembly the authority to pass laws regulating work-environment conditions. That is, “[t]he hours and minimum-wage clauses address working terms and conditions within the working environment context; they do not address qualifications for employment nor do they address issues outside of the working environment.” Thus, “the general-welfare clause should, likewise, be interpreted to address working environment conditions.”³²

Within the “general-welfare” clause, the *Lima* court further held, the words “comfort, health, and safety” relate to working-environment conditions and are followed by the limiting term “employees.” The *Lima* court, and the *Cleveland* court following it, interpreted the term “general welfare,” thus, to grant the State legislative authority for laws affecting *only* employees’ work environment.³³

Laws enacted under § 34 are supposed to be applied to “*all* employees” (emphasis

³⁰ Id. at ¶ 32.

³¹ See <http://www.businessdictionary.com/definition/noscitur-a-sociis.html> (last accessed on Feb. 18, 2008).

³² Id. at ¶¶ 33–34.

³³ Id. at ¶ 35; *Cleveland*, 2008 WL 256612, at *5, ¶ 2 (“We believe the general welfare clause is to be read consistently with those clauses that regulate matters concerning employees acting within the scope of their employment.”)

added). The arbitrary classifications that R.C. 9.481 creates between permanent full-time employees and all others, including permanent part-time employees, show that R.C. 9.481 does not apply to “all employees,” nor even the singular class of all local subdivision employees. The General Assembly’s own Legislative Service Commission warned about and admitted R.C. 9.481’s weak claim to § 34 authority:

Section 34 of Article II of the Ohio Constitution authorizes the passage of laws dealing with wages and hours of employment and laws providing for the comfort, health, safety, and general welfare of all employees. This section was originally enacted to ensure that laws regarding minimum wages and the like would not unconstitutionally impair contracts; no consideration was given to its effect on the Ohio Constitution’s home rule provisions. Without a court interpretation, it is difficult to say whether this section would apply to the act’s prohibition, despite the General Assembly’s recognition of it, where the subject of the state law is not *all* employees, but instead only *certain government* employees.³⁴

The General Assembly ignored this warning and encroached upon local authority anyway.

3. Legislative-history analysis: § 34 was adopted to grant the General Assembly authority to protect employees from mistreatment.

The *Lima* appeals court studied the *Lochner*-era historical circumstances surrounding the adoption of § 34 and concluded that “the constitutional delegates were well aware of both the working conditions in American factories and the legal climate with respect to labor reform.”³⁵ The court further concluded after quoting extensively from the historic debates at the time that “it is obvious that [§ 34’s] purpose was to empower the General Assembly with legislative authority over (1) the hours of labor, (2) a minimum wage, and (3) working environment.”³⁶

Other cases have also noted § 34’s historical context and that its stated purpose is preventing on-the-job mistreatment of employees:

Judge Dwyer certainly knew the propos[ed Amendment] was about

³⁴ ¶ 3 of Legislative Service Commission comments (emphasis in original).

³⁵ *Lima* at ¶ 40.

³⁶ *Id.* at ¶ 46.

more than a minimum wage. In a moving speech in support of the proposal, he said, in part: “[t]herefore, give your employees fair living wages, good sanitary surroundings during hours of labor, protection as far as possible against danger, a fair working day. Make his life as pleasant for him as you can consistent with his employment.”³⁷

Thus, the *Lima* court held, “R.C. 9.481 does not fall within Section 34’s original intent as evidenced by the historical context and the Convention proceedings. Rather, R.C. 9.481 attempts to regulate aspects of employment having nothing to do with the working environment—namely, where an employee resides after leaving work.”³⁸

4. Interpretative consequences: to construe § 34 as the State suggests would make its scope absurdly limitless.

In holding that § 34 is limited to working conditions for employees, the *Lima* court highlighted the absurdity of interpreting § 34 to issues such as residency: “If the general-welfare clause extends to issues outside of the working environment, then what topic affecting employees would ever exceed its scope?”³⁹ The State could conceivably argue that any law that would benefit an employee, however intangibly, or that an employee might like, falls under § 34’s ambit and thus undercuts home rule under all circumstances. The *Akron* court similarly held that § 34 “should not be interpreted in a manner that would yield an absurd result.”⁴⁰ In the case of R.C. 9.481, “To construe the legislative authority under Article II Section 34 to pass laws providing for the ‘general welfare’ of employees to be so broad as to encompass a law that reinstates a right that employees voluntarily surrendered upon accepting employment would yield an absurd result, and could potentially give limitless power to the General Assembly to

³⁷ *City of Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St. 3d 1, 15 (quoting 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio, at 1332–33 (1912)).

³⁸ *Lima* at ¶ 47.

³⁹ *Id.* at ¶ 48.

⁴⁰ *Akron* at ¶ 28.

undermine all home rule authority of municipalities to make decisions about their employees.”⁴¹

Carried to the extreme the State suggests, such an interpretation would undermine other constitutional provisions, such as those requiring that that public employment be given by competitive exam,⁴² as long as the State claims that it is doing so under § 34.

5. The case law upholding authority under § 34 is limited to situations involving employee economic welfare and working conditions.

While § 34 represents a broad grant of authority to the State, that “does not mean that the power exceeds the amendment’s language or original intent . . .”⁴³ Other decisions interpreting § 34 demonstrate, as both the *Lima* and *Akron* courts held, that § 34’s “general-welfare clause” is limited to workers’ economic conditions.⁴⁴ Section 34 provides the State with the authority to

- establish a mandatory minimum wage.⁴⁵
- establish a maximum of 40 hours per week for non-teaching school-district employees.⁴⁶
- require employers to provide safe environments for employees and others who are frequently on-site.⁴⁷
- establish pensions for municipal employees.⁴⁸
- regulate municipal employees’ ability to collectively bargain.⁴⁹

⁴¹ *Id.* See also *Cleveland* at ¶ 27 ([W]e decline to interpret Section 34 to grant the General Assembly virtually limitless authority over municipalities in making employment decisions.”)

⁴² Ohio Const. art. XV, § 10 Civil Service.

⁴³ *Lima* at ¶ 51.

⁴⁴ *Id.* at ¶¶ 59–62; *Akron* at ¶ 25.

⁴⁵ *Strain v. Southerton* (1947), 148 Ohio St. 153, syllabus at ¶ 2.

⁴⁶ *Vincent v. Elyria Bd. of Educ.* (9th Dist. 1966), 7 Ohio App. 2d 58.

⁴⁷ See *Comerford v. The Jones & Laughlin Steel Corp.* (1959), 170 Ohio St. 117, 119.

⁴⁸ *State ex rel. Bd. of Trustees of Police and Firemen’s Pension Fund v. Bd. of Trustees of Police Relief, and Pension Fund of Martins Ferry* (1967), 12 Ohio St. 2d 105.

⁴⁹ *City of Rocky River*, 43 Ohio St. 3d 1. See also *DeVennish v. City of Columbus* (1991), 57 Ohio St. 3d 163, 166 (collective-bargaining act does not cover applicants for original employment: “it is eminently logical to exclude all aspects of the original appointment process from collective bargaining”).

- mandate that a municipal employee can transfer any unused sick leave when the employee transfers to another public agency, thus ensuring a healthy work place for employees.⁵⁰

The Supreme Court has also noted that statutes establishing various on-the-job conditions fall within the State’s § 34 powers—including matters regarding continuing-education, training, or imposing other safety-and-welfare requirements, including firearms training and HIV testing.⁵¹

As the *Akron* appeals court noted, “Unlike any of the legislation that the Supreme Court has determined falls within the scope of Article II Section 34 as providing for the general welfare of employees, Section 9.48.1 [*sic*] does not pertain to the protection or regulation of any existing right or obligation of the affected employees. Instead, it is an attempt to circumvent municipal home rule authority and reinstate a ‘right’ that the employees voluntarily surrendered when they accepted government employment.”⁵²

Employees do not have the right to reside wherever they choose and be employed by a municipality.⁵³ Rather, as the *Akron* court observed, applicants choose where they wish to live *prior* to accepting employment. The decision has no impact on employees’ health, safety, wage conditions, nor employees’ “general welfare.” Moreover, as shown below, municipal employees have no vested right in their continued employment.⁵⁴ Because there are no vested rights at issue with employees’ residence choices and because those choices do not impact employees’ working conditions, the State’s attempt, via R.C. 9.481, to limit the City’s ability to hire whom it chooses

⁵⁰ *State ex rel. Reuss v. City of Cincinnati* (1st Dist. 1995), 102 Ohio App. 3d 521, 523–24.

⁵¹ *Am. Ass’n of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St. 3d 55, 61.

⁵² *Akron* at ¶ 25; see also *Toledo* at ¶ 16.

⁵³ See *McCarthy v. Philadelphia Civil Service Comm.* (1976), 424 U.S. 654, 646–47 (“[t]here is no support” for a claim that a municipal employee has a constitutional right to be employed by the city while living elsewhere); *Hegyvi v. City of Bedford* (8th Dist. May 10, 1979), No. 38745, 1979 WL 210145, 1979 Ohio App. LEXIS 9005, at *12–13; *Wardwell v. Bd. of Educ.* (6th Cir. 1976), 529 F.2d 625, 628.

⁵⁴ *Fuldauer v. City of Cleveland* (1972), 32 Ohio St. 2d 114, syllabus at ¶ 3; see also *Quigley v. Vill. of Blanchester* (12th Dist. 1968), 16 Ohio App. 2d 104, 107.

remains unconstitutional. Section 34 does not protect it.

The State insists that a municipal employee's choice as to his residence is a "condition" of employment and therefore automatically a subject of State control under § 34. First, the category of employment "conditions" is not part of § 34's text. If the Ohio Constitution sought to grant control over "conditions," it would have so stated. Instead, § 34 grants a more limited control to the State: employees' minimum wages, health, safety, and general-welfare matters.⁵⁵ Even if employment "conditions" were subject to § 34, however, § 34's goals show that § 34 would be focused on true working "conditions," rather than "conditions" in the sense of qualifications for employment.⁵⁶ The residency qualification is a selection criterion and does not relate to day-to-day working conditions that employees face on the job. Applicants for City positions must decide whether they would like to work for the City while living in the City. Indeed, the residency qualification is akin to other pre-qualifications, such as the lack of any criminal record. Municipalities, as other employers, may decide that they would prefer to select their employees from among those who have no criminal record, just as they may decide that they would prefer to select employees from among those who reside (or are willing to reside) in the municipality. Both qualifications would be artificial and meaningless without a continuing requirement to maintain their adherence to the qualification. The continuity of the requirements

⁵⁵ *Id.*

⁵⁶ See *State v. Iden* (5th Dist. 1942), 71 Ohio App. 65, 72 (holding "[t]he statutory term 'employment' rather describes the station or situation in which an 'employee' finds himself. Clearly the purpose of Section 34 of Article II was not to define the word 'employees' but to empower the Legislature to pass laws that would promote the general welfare of employees by improving their working conditions; in other words, their 'employment.'"); *Lorain City Board of Education v. SERB* (1988), 40 Ohio St. 3d 257. Cf. *State ex rel. Dispatch Printing Co. v. Johnson* (2005), 106 Ohio St.3d 160, 2005-Ohio-4384 at ¶ 26 (holding that public employees' home residences generally document the places to which they return after having performed the work that comprises the "organization, functions, policies, decisions, procedures, operations, or other activities" of their agency under Ohio Public Records Act).

does not, however, render the qualification an employment “condition.”⁵⁷

Even cases that imprecisely use the phraseology “condition of employment” when referring to residency qualifications do not help the State’s position. In *City of St. Bernard v. State Employment Relations Bd.*, for example, although the court did discuss the nature of a residency qualification when assessing a city’s alleged failure to bargain, the court explicitly held: “We reject, however, the statement in SERB’s opinion that ‘[a]s the product of the City’s illegal conduct [the residency requirement] is invalid’”⁵⁸

Here again, the General Assembly’s unilateral proclamation that its authority derives from § 34 does nothing to advance its legal position. “The interpretation of the Ohio Constitution is . . . not a legislative but a judicial question, which ultimately [the] court must decide.”⁵⁹ If the Court were limited to the General Assembly’s own decisions about the scope of its authority, there would be no checks and balances. This Court, and not the General Assembly, is charged to determine whether R.C. 9.481 falls within § 34’s scope.

As shown above, under the Ohio Constitution, the State does not have the authority to limit municipalities from choosing employees from among those who are willing to live within their municipalities. Municipalities’ choices in this regard, and those of their applicants, do not implicate minimum wages or employee health, safety, or general welfare as those terms have historically been interpreted by this Court and under construction principles. The contrary

⁵⁷ See *Andre v. Trustees of Maywood* (7th Cir. 1977), 561 F.2d 48, 53 (upholding constitutional validity of city-residency qualification in the face of arguments that the ordinance wrongly imposed condition on continuing employment: “Since appropriately defined and uniformly applied bona fide residence requirements do not impermissibly violate the right to interstate travel, the distinction between such requirements imposed as an initial condition of municipal employment and such requirements imposed as a continuing condition of such employment becomes a distinction without a difference.”)

⁵⁸ *City of St. Bernard v. State Employment Relations Bd.* (1st Dist. 1991), 74 Ohio App. 3d 3, 7.

⁵⁹ *State ex rel. Shkurti v. Withrow* (1987), 32 Ohio St. 3d 424, 429.

appellate district opinions that the State cites overlook this central point: Section 34 operates, as it was intended, to retain for the State the power to ensure proper working conditions. The State thus had no authority to enact R.C. 9.481.

D. The City's residency qualification is valid under the City's home-rule powers.

1. The home-rule amendment to the Ohio Constitution gives the people of the City of Youngstown the power to govern themselves regarding matters of local concern and protects them from special interests who seek and obtain State interference.

Ohio's voters amended the Constitution to grant cities the power of self-government. The amendment provides that "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."⁶⁰

"The purpose of the home-rule amendment was to put the conduct of municipal affairs in the hands of those who knew the needs of the community best, to-wit, the people of the city."⁶¹ When home rule was adopted in 1912, a main goal, as a sponsor stated, was that "No boss or group of bosses can come to the general assembly and get a special law passed and force it upon any municipality until and unless it is accepted by the people of that municipality."⁶² The idea was to "confer upon the cities for the benefit of those who live in the cities control over those things peculiar to the cities and which concern the cities as distinct from the rural communities." At stake was that "the people of a municipality shall have the right to control their own affairs."⁶³

The "are-not-in-conflict-with-general-laws" clause of the home-rule amendment limits

⁶⁰ OHIO CONST. art. XVIII, § 3 (the "home-rule amendment" or "home rule").

⁶¹ *Northern Ohio Patrolmen's Benevolent Ass'n*, 61 Ohio St. 2d at 379 n.1.

⁶² 2 Ohio Constitutional Convention Proceedings and Debates (1912) at 1436.

⁶³ *Id.* at 1441.

the City's police powers only. It has no impact on powers of local self-government.⁶⁴ Thus, municipalities' enactments on matters of local self-government trump conflicting state statutes.⁶⁵ "As we explained more than 50 years ago, the Home Rule Amendment was designed to give the broadest possible powers of self-government in connection with all matters which are strictly local"⁶⁶ Home rule is so important that all municipalities have these powers, regardless of whether they have adopted a charter.⁶⁷

2. As a State encroachment on home-rule power, R.C. 9.481 fails the Ohio Supreme Court's latest home-rule test in *Canton* and its progeny.

While the Ohio Supreme Court has considered countless home-rule cases over the years, *Canton v. State of Ohio*⁶⁸ provided the most recent, definitive approach to deciding such cases. (The Court reaffirmed and reapplied the *Canton* test again in *Am. Fin. Servs. Assn. v. Cleveland*.⁶⁹)

Under the *Canton* test, "A state statute takes precedence over a local ordinance when

- (1) the ordinance is in conflict with the statute,
- (2) the ordinance is an exercise of the police power, rather than of local self-government, and

⁶⁴ *State Pers. Bd. of Review v. City of Bay Village Civil Serv. Comm'n* (1986), 28 Ohio St. 3d 214, 217.

⁶⁵ *Canton v. State* (2002), 95 Ohio St. 3d 149, 150; see *State ex rel. Bardo v. City of Lyndhurst* (1988), 37 Ohio St. 3d 106, 108-09.

⁶⁶ *American Fin. Servs. Assn v. City of Cleveland* (2006), 112 Ohio St. 3d 170, 175 (internal quotation omitted).

⁶⁷ See *City of Parma*, 61 Ohio St. 2d at 382-83; *Vill. of Perrysburg v. Ridgway* (1923), 108 Ohio St. 245, syl. 5 ("The grant of [Home Rule] power is equally to municipalities that do adopt a charter as well as those that do not adopt a charter").

⁶⁸ 95 Ohio St.3d 149, 2002-Ohio-2005.

⁶⁹ (2006), 112 Ohio St.3d 170, 2006-Ohio-6043.

- (3) the statute is a general law.”⁷⁰

As shown below, R.C. 9.481 fails prongs 2 and 3 of the *Canton* home-rule test.

- a. ***Canton* prong 1: New R.C. 9.481 conflicts with Youngstown’s 22-year-old charter provision and ordinance making residency an employment qualification.**

The parties agree that the well-established Youngstown Charter § 52 (C) and Y.C.O. § 163.37 conflict with the newly imposed statute, R.C. 9.481. The local laws have long set a residency qualification for municipal employees. The statute seeks to strip away the City’s authority.

- b. **R.C. 9.481 fails *Canton* prong 2 because Youngstown’s residency qualification is an exercise of local self government rather than of the police power, i.e., is not of statewide concern.**

The state’s police-power and the local-self-government distinctions are important because each grants constitutional authority equal in dignity. Thus, the state may not restrict a city’s exercise of local self-government.⁷¹ If a state law conflicts with a local ordinance relating solely to self-government conflicts, then “the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.”⁷²

The Supreme Court has held that the “statewide-concern” doctrine decides whether a particular issue is a matter “within the power of local self government.” This doctrine “falls within the existing framework of the *Canton* test.”⁷³ That is, courts should “consider the

⁷⁰ *Id.* at ¶¶ 9, 11 (citing *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted* (1992), 65 Ohio St.3d 242, 244–45) (holding statutes that limited ability of political subdivisions to regulate the location of permanently sited manufactured homes violated home-rule amendment because they were not general laws).

⁷¹ *Columbus v. Teater* (1978), 53 Ohio St.2d. 257 (citing *Canton v. Whitman* (1975), 44 Ohio St.2d 62, 66, appeal dismissed, 425 U.S. 956 (1976)).

⁷² *Lima* at ¶ 67.

⁷³ *Am. Fin. Servs. Assn.*, 112 Ohio St.3d 170, 2006-Ohio-6043, ¶¶ 29-30. See also *City of Kettering v. State Employment Relations Bd.* (1986), 26 Ohio St. 3d 50 (State has control of a

doctrine when deciding whether a local law is “an exercise * * * of local self government . . . or whether a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all the citizens of this state.”⁷⁴

In *State Pers. Bd. of Review v. City of Bay Village Civil Serv. Comm’n*,⁷⁵ the Ohio Supreme Court applied a two-prong test in determining whether the State had the authority to investigate and remove members of a city’s civil-service commission.

- Under the first part, the Court determined that the municipality’s enactments establishing a procedure for overseeing its commission did not impart “significant extraterritorial effects.” The Court held that although the commission’s actions could have an effect on persons outside of the municipality, such an effect was not enough to qualify as “significant extraterritorial effects,” particularly when the city had its own requirements for commissioner oversight.⁷⁶
- Under the second part, the Court held that the impact of the city’s procedures on the state as a whole did not outweigh the importance to the city of its procedures. “[T]here is no statewide concern for the membership of municipalities’ civil service commissions and certainly none which outweighs the concern of the local inhabitants over the subject.”⁷⁷

The Court thus held that the matter was one of local self-government. “We find that the municipalities’ charter provisions herein, regulating the procedures for selection and removal of their civil service commissioners, are sufficiently confined to the internal affairs of these municipalities as to be immune from conflicting state regulations under the Home Rule Amendment.”⁷⁸

It is hard to imagine a more strictly local issue than a municipality’s qualifications for its

subject matter only if the matter affects the state as a whole more than the matter affects the municipality and its residents); *State ex rel. Evans v. Moore* (1982), 69 Ohio St. 2d 88; *Cleveland Elec. Illuminating Co. v. Painesville* (1968), 15 Ohio St. 2d 125 (same).

⁷⁴ *Am. Fin. Servs. Assn*, 112 Ohio St.3d 170, 2006-Ohio-6043 at ¶ 30.

⁷⁵ (1986), 28 Ohio St. 3d 214, 216.

⁷⁶ *Id.* at 216–17.

⁷⁷ *Id.* at 217.

⁷⁸ *Id.* at 218.

own employees. As the Ohio Supreme Court held, “It would seem obvious not only from what this court has said with reference to the selection of municipal officers as being a matter of purely local concern, but also from the dictates of common sense, that the method of selection of municipal officers, their compensation and their purely local duties are matters which do not conflict with any general problem or concern of the state at large.”⁷⁹

The Ohio Supreme Court has upheld as matters of local self-government municipal decisions with far more significant extraterritorial effects than those of the residency qualification. In *City of Cleveland v. City of Shaker Heights*,⁸⁰ for example, the Court held that the Shaker Heights had home-rule power to barricade two of its streets—even when that caused about 7,000 to 14,000 cars in two neighboring cities to be rerouted every day. Despite the tangible impact on Shaker Heights’ neighbors, the Court held that the city retained power over its own streets: “[a]dverse extraterritorial traffic effects on a neighboring municipality are not, standing alone, enough to overcome the presumption of the validity of a legislative enactment taken under a municipality’s home rule powers.”⁸¹

The City’s decision about how to choose public servants for Youngstown has far less, if any, tangible impact on its neighbors than in the tangible *Shaker Heights* car-jam scenario. The State’s suggestion that the City’s residential qualification deprives other Ohio communities of the benefits of housing those employees trivializes the Supreme Court’s stringent “*significant* extraterritorial effects” test underscored in *Shaker Heights*. By the State’s measure, any municipal home-rule decision could theoretically deprive another community’s residents of some benefit. Yet that approach would render home rule—letting local people govern themselves—a

⁷⁹ *State ex rel. Hackley v. Edmonds* (1948), 150 Ohio St. 203, 216.

⁸⁰ (1987), 30 Ohio St. 3d 49.

⁸¹ *Id.* at 53 (and finding that the city’s plan was not unreasonable, arbitrary/capricious, nor pursued in bad faith).

hollow promise.

Many Ohio and national municipalities have enacted residency qualifications to address local concerns.⁸² The concerns and rationales that spur municipal residency qualifications are purely local in nature:

- “Residency requirements are considered to further the objective of having public safety personnel nearby and able to quickly respond during emergencies or while off duty on short notice.”⁸³ “Excessive travel times may mean an increased risk to the public experiencing the emergency.”⁸⁴ “[C]ommunities must assess their local needs, analyze fire frequency and loss data, and determine the staffing level that meets their own requirements.”⁸⁵
- Although the need for local fire and police personnel to be quickly accessible is obvious, snow removal, health department, sanitation, and water, sewer, and flooding-management personnel are also crucial in a municipality’s response to emergencies. Certain emergencies can create an “all-hands-on-deck” situation in which even non-safety and administrative personnel provide crucial back-up team support to first-responding personnel.⁸⁶

⁸² See Jim Provance, *Finkbeiner Riled Over Law Abolishing City Residency Rules*, TOLEDO BLADE, Jan. 28, 2006 (available at www.toledoblade.com/apps/pbcs.dll/article?aid=/20060128/NEWS09/601280411) (noting that, according to an Ohio Municipal League review, 125 cities and 13 villages in Ohio have some type of residency requirement) (last accessed Aug. 20, 2008).

⁸³ 16A THE LAW OF MUNICIPAL CORPORATIONS § 45.32 (McQuillin ed. 2002) (attached as Appendix 77).

⁸⁴ MANAGING FIRE AND RESCUE SERVICES 121 (Compton ed. 2002) (attached as Appendix 93).

⁸⁵ *Id.* at 127; see also 1 FIRE PROTECTION HANDBOOK 7–18 (Cote, 19th ed. 2003) (“[F]ire department rules of employment may stipulate that, because of the emergency nature of the work, employees must reside within a reasonable distance of the community.”) (attached as Appendix 107); Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments, No. 1710, Annex Note A.4.1.2 (National Fire Protection Ass’n 2004) (attached as Appendix 111) (“response criteria are affected by circumstances such as response personnel who are not on duty, nonstaffed fire station facilities, natural barriers, traffic congestion, insufficient water supply, and density of population or property” requiring consideration for fire-department objectives in response time).

⁸⁶ See *Securitas* (publication of the Suburban Emergency Management Project) Sept./Oct. 2005 (available at <http://www.semp.us/securitas/2005sept-oct.html>) (“We had to truly get to the point of involving every aspect of local government service, including public works, health, utilities, connections with the hospitals, for example. We had to improve our ability to respond in a good way through bringing EVERYONE to the table. That was what we were able to gain [from previous emergency experience], and that’s where the national emphasis is going. You’ve got to make sure that all hands are on deck. You can’t leave departments behind because they are

- Furthermore, “continuous residency requirements are believed to be a reasonable means to promote a stable and diverse urban population and as a means to enhance the performance of employees by giving them an interest in the community in which they serve.”⁸⁷
- Residents are likely to be more knowledgeable of the City’s issues and conditions, more sympathetic to the plights faced by the persons they will serve in carrying out municipal functions, more sensitive to the expenditure of municipal funds, and more representative of the City’s ethnic and racial make-up.
- Residency helps maintain housing values and population in urban centers that have been devastated economically and continue to suffer. Losing residency can send cities into a downward spiral. A study by Professor Robert Simons of the nationally ranked Levin College of Urban Affairs at Cleveland State University⁸⁸ shows a potentially devastating economic effect on housing values, population, and tax base in Youngstown if the State succeeds in encroaching upon the City’s residency qualification for its public servants.⁸⁹

Appreciating these concerns, Ohio courts and courts nationally have protected residency qualifications from attack and affirmed the local rationales:

- In *Quigley v. Village of Blanchester*,⁹⁰ the appeals court upheld a village-residency qualification under challenge from a city police officer who lived twenty miles from the village. “It seems to the court that the prohibition in the ordinance as to residence is reasonable, when we look at unpredictable emergencies inherent in police work. If an officer is a resident of the village, he is more easily contacted for duty than when he is twenty miles away.”⁹¹

traditionally not in the emergency response business. You see it in emergencies across the board—the public utilities, public works, and code enforcement employees are critical to the police and fire being able to do their work. This was one of the important things we learned”); <http://www.governmentafterkatrina.org/profiles/irs.htm> (last accessed Aug. 20, 2008) (discussing need for IRS involvement in Katrina response).

⁸⁷ 16A THE LAW OF MUNICIPAL CORPORATIONS § 45.32 (McQuillin ed. 2002).

⁸⁸ See <http://urban.csuohio.edu/> and http://grad-schools.usnews.rankingsandreviews.com/grad/pad/city_management (last accessed Aug. 20, 2008) (reporting high ranking of the College in *U.S. News and World Report* rankings of graduate programs in urban affairs).

⁸⁹ Professor Simons’ Report (assessment of substantial negative economic and fiscal impact that State intrusion into Youngstown’s local self government will have if deemed constitutional—loss of population, a drop in housing prices, and shrinking of the tax base resulting in a revenue loss in the millions of dollars). See also *Lima* at ¶ 77 (reciting various other factors showing cities to have a substantial interest in residency as qualification for employment).

⁹⁰ (12th Dist. 1968), 16 Ohio App. 2d 104.

⁹¹ *Id.* at 107.

- The Colorado Supreme Court recognized numerous justifications for a city’s residency qualification. These included employees being more readily available during civic emergencies, and more attentive, compassionate, and diligent in their work; as well as the investment of city tax dollars in the community.⁹²
- Federal courts recognize that residency qualifications also promote a greater awareness among teachers of the “understanding for the racial, social, economic, and urban problems of the children they teach.”⁹³

These concerns support a judicial finding that the City most significantly experiences the effects of employee residency (or nonresidency). Under *Canton* prong 2, thus, residency is a matter of local-government—not State—concern. Alleged extraterritorial concerns are incidental.

Ohio courts have also repeatedly held matters regarding municipal employment to be distinguishable from broader matters of statewide concern. In *Ohio Ass’n of Pub. Sch. Employees, Chapter No. 471 v. City of Twinsburg*,⁹⁴ for example, the Supreme Court faced the question of whether a city’s ordinance eliminating certain municipal (school district) employees from the purview of the city’s civil service commission fell within the city’s power of local self-government or instead was a matter of statewide concern. The Court held that “[i]t is well-settled in Ohio that regulation of city civil service is within the powers of local self-government.”⁹⁵ Contrasting two other Supreme Court decisions holding the cities’ acts to conflict with matters of statewide concern, the *Twinsburg* Court observed that, “In both of the cited cases, the subject of legislative enactment, conservation of vital natural resources and the

⁹² *City and County of Denver v. Colorado* (Colo. 1990), 788 P.2d 764, 771 (holding that the “substantial” municipal interests in residency qualifications far outweigh the state’s and that the qualification is thus a matter of local concern); see also *Gusewelle v. City of Wood River* (7th Cir. 2004), 374 F.3d 569 (Illinois municipality’s residency qualification rationally related to legitimate government interest).

⁹³ *Wardwell v. Bd. of Educ.* (6th Cir. 1976), 529 F.2d 625, 628 (upholding constitutionality of Cincinnati’s residency qualification as not violating constitutional right to travel and recognizing numerous rational local bases in support of the qualification).

⁹⁴ (1988), 36 Ohio St. 3d 180.

⁹⁵ *Id.* at 182–83.

prevention of disease, clearly transcended the boundaries of a municipality. In the case before us,” the Court added, “Twinsburg’s restriction of the jurisdiction of its civil service commission to exclude the city school district and its employees has no impact upon anyone other than one city school district and its employees.”⁹⁶

Here, too, municipal employees’ residency choices affect only the City; no larger statewide issues are at play. The limited and largely internal effects of the residency qualification stand in sharp contrast to those matters that Ohio courts have held to be issues of statewide concern:

- Regulation of railroad crossings by the Public Utility Commission.⁹⁷
- Collection of taxes on behalf of the Park District.⁹⁸
- Procedures for the detachment of a portion of the village into a new township.⁹⁹
- Zoning requirements for hazardous-waste facilities.¹⁰⁰
- Establishment of a prevailing-wage law.¹⁰¹

All of these matters involve issues that impact a wider community than the municipality itself. For example, the regulation of railroads and crossings, which travel and exist across the state, and procedures for creating new townships create statewide effects and interests. Procedural consistency is essential. The *Mill Creek* Court held that park districts “exist in and affect people in every county in the state, and all of the people of the state are benefited by these

⁹⁶ Id. at 185.

⁹⁷ *City of Reading v. Pub. Utils. Comm’n of Ohio* (2006), 109 Ohio St. 3d 193.

⁹⁸ *State ex rel. Bd. of Comm’ns of Mill Creek Metro. Park Dist. v. Tablack* (1999), 86 Ohio St. 3d 293.

⁹⁹ *Village of Beachwood v. Bd. of Elections of Cuyahoga County* (1958), 167 Ohio St. 369.

¹⁰⁰ *Clermont Envt’l. Reclamation Co. v. Wiederhold* (1982), 2 Ohio St. 3d 44.

¹⁰¹ *State ex rel. Evans v. Moore* (1982), 69 Ohio St. 2d 88.

districts.”¹⁰² By contrast, the City’s residency qualification does not display any statewide effects or interests and its impact is felt solely within the City.

R.C. 9.481 on its face contains an admission that the General Assembly sought not to address a statewide concern, but to encroach upon local authority. By creating in R.C. 9.481 its own permissible residency requirement “to ensure adequate response time by certain employees . . . to emergencies of disasters,” the General Assembly expressly acknowledges the important local interest in having the residences of municipal employees geographically restricted.¹⁰³

The General Assembly further expressed its self-doubt when it admitted:

Residency requirements for municipal employees most likely are a matter of local self government, which can be overcome only when there is a state law expressing a matter of statewide concern. Case law has shown Ohio courts recognize the local nature of employment matters involving residency issues. While there may be some extraterritorial impact from municipal ordinances creating residency requirements, courts may find the issue to be predominantly one of local concern, and therefore, such a municipal ordinance would be upheld.¹⁰⁴

Nevertheless, in its encroachment on local interests, R.C. 9.481 authorizes allowable distances between employees’ residences and their municipalities that depend on the location and size of the adjacent counties. As shown above, employees who decide to leave Youngstown could move to locations more than an hour and a half away, in good weather conditions. Some

¹⁰² *Mill Creek*, 86 Ohio St. 3d at 296.

¹⁰³ R.C. 9.481(B)(2)(b) (“To ensure adequate response time by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political division may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state”).

¹⁰⁴ Legislative Analysis, Sub. S.B. 126, Notes, 126th General Assembly.

already have and more will if R.C. 9.481 is allowed to stand.¹⁰⁵ And more will follow.¹⁰⁶

While the State insists that R.C. 9.481 is based on the General Assembly's "statewide concern" that municipal employees be free to choose where they want to live in the State—effectively a due-process claim—the Courts have already held that there is no such right. As the Ohio Supreme Court has already held, "[t]here is no constitutional right to be employed by a municipality while living elsewhere."¹⁰⁷ A municipal employee has no "vested interest or private right of property in [his] office or employment."¹⁰⁸

While the State may insist that because individuals around the state have filed complaints about the issue means that the municipal-residency issue is inherently of statewide concern, this is circular reasoning. It would mean that courts should find that any controversial issue that emerges around the state automatically places that issue within the scope of state authority and outside of municipal authority. This test would render virtually all home-rule powers meaningless.

If a policy primarily affects a municipality, there must be some statewide interest in the

¹⁰⁵ See R.C. 9.481; *Where to live, where to work*, YOUNGSTOWN VINDICATOR, July 16, 2006 (reporting that after enactment of R.C. 9.481, Youngstown police patrolman Daniel Tickerhoof has taken up residence in Canal Fulton, Stark County, more than an hour and fifteen minutes from Youngstown).

¹⁰⁶ Professor Simons' Report at 12–13.

¹⁰⁷ *Buckley v. City of Cincinnati* (1980), 63 Ohio St. 2d 42, 44 (holding Cincinnati's municipal residency requirement constitutional under challenge of infringement of right to travel and finding no conflict with civil-service commission statutes).

¹⁰⁸ *Fuldauer*, 32 Ohio St. 2d 114, syl. 3 (approving and following *State ex rel. Gordon v. Barthalow* (1948), 150 Ohio St. 499, syl. 1); see also *Quigley*, 16 Ohio App. 2d at 107 (noting same); *Fraternal Order of Police v. City of Dayton* (S.D. Ohio Apr. 23, 1990), No. C-3-89-367, 1990 U.S. Dist. LEXIS 5356, 1990 WL 1016521 (no property right, and thus no deprivation of due process, in maintaining employment regardless of place of residence); *Senn v. City of Cleveland* (8th Dist. Feb. 24, 2005), No. 84598, 2005 Ohio App. LEXIS 744, 2005 WL 428764, 2005-Ohio-765 (city's residency requirement does not violate equal protection or due process); *Colorado*, 788 P.2d at 770 ("[t]he question is not whether a person is free to live where he or she wishes but rather whether one may live where one wishes and at the same time insist upon employment by government.).

substance of the policy itself—and, an interest that overrides the municipal interests. Scattered employee complaints are not enough to justify a finding of statewide concern, i.e., an interest by the State of Ohio. If enough teachers’ unions complained about civil-service-commission restrictions, those restrictions would not magically transform into a matter of statewide concern, thus overruling the Supreme Court’s *Twinsburg* decision.

The General Assembly’s own conclusory proclamation that R.C. 9.481 is a matter of “statewide concern” does not bind this Court. Rather, under separation of powers, “The interpretation of the words ‘statewide concern’ is a matter of constitutional interpretation, since those words, as used in the statewide-concern doctrine, are part of an interpretation of the Ohio Constitution Thus, the question of whether the subject matter of [the statute in dispute] is a matter of ‘statewide concern’ is a judicial question”¹⁰⁹

c. R.C. 9.481 also fails *Canton* prong 3 because it is not a “general law.”

The *Canton* Court held that there is a four-part test to apply to determine when a statute is a “general law,” the third *Canton* prong. To be a “general law,” a statute must

- (1) be part of a statewide and comprehensive legislative enactment,
- (2) apply to all parts of the state alike and operate uniformly throughout the state,
- (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and
- (4) prescribe a rule of conduct upon citizens generally.”¹¹⁰

¹⁰⁹ *City of Dublin v. State* (Franklin Comm. Pls. 2002), 118 Ohio Misc. 2d 18. *See also Cincinnati, Wilmington & Zanesville RR. Co. v. Comms. of Clinton Cty.* (1852), 1 Ohio St. 77; *State ex rel. Shkurti*, 32 Ohio St. 3d at 429 (Interpretation of the Ohio Constitution presents “not a legislative but a judicial question, which ultimately this court must decide.”).

¹¹⁰ *Canton*, 95 Ohio St.3d at 149–50 (discussing *Schneiderman v. Sebastien* (1929), 121 Ohio St. 80, 82–83 (general laws apply to all areas of state alike, speed limit laws are general laws);

R.C. 9.481 fails as a general law under each element of this test. And the *Lima* and *Cleveland* appeals courts agreed that the law fails at least elements three and four, meaning it fails the entire test.

- i. R.C. 9.481 is not a “statewide and comprehensive enactment;” it is a legislative non-sequitur sandwiched in the middle of other non-sequiturs and is thus not a “general law” that overcomes the City’s home-rule powers.*

A statewide and comprehensive enactment exists where the statutes in question involve adoption of a comprehensive statutory scheme. Examples including the state regulating control of the disposal of hazardous wastes¹¹¹ and statewide regulation of private detectives under a comprehensive statewide-licensure plan for detectives.¹¹² R.C. 9.481, by contrast, involves no comprehensive enactment at all. It is nothing more than a prohibition on local self-government having a residency qualification for its own employees. Section 9.481’s lonely status in the Revised Code as a non-sequitur wedged between unrelated subjects underscores the point. It sits between R.C. 9.48 “County or township participation in contract; joint purchasing program” and R.C. 9.50 “Display of MIA/POW flag at certain public buildings” in the “Miscellaneous” chapter

Village of West Jefferson v. Robinson (1965), 1 Ohio St.2d 113 (statutes purporting to grant or prohibit the legislative power of municipal corporations are not general laws); *Garcia v. Siffirin Residential Assn.* (1980), 63 Ohio St.2d 259 (“general laws are laws operating uniformly throughout the state, * * * which prescribe a rule of conduct upon citizens generally, and which operate with general uniform application throughout the state under the same circumstances and conditions”); *Clermont Environmental Reclamation Co.*, 2 Ohio St.3d 44 (statute that was part of comprehensive statutory scheme to regulate state’s control hazardous-waste disposal was a general law); *Ohio Assn. of Private Detective Agencies*, 65 Ohio St.3d 242 (ordinance struck down because it conflicted with statewide-regulatory program), *Linndale v. State* (1999), 85 Ohio St.3d 52 (statute prohibiting certain municipal regulation of highway struck down as not being part of system of uniform statewide regulation on subject of traffic-law enforcement and because it did not impose rule of conduct on citizens generally)).

¹¹¹ *Clermont*, 2 Ohio St. 3d 44.

¹¹² *Ohio Assn. of Private Detective Agencies*, 65 Ohio St.3d 242.

of the Revised Code.

ii. R.C. 9.481 does not operate uniformly throughout the State and thus is not a “general law” as Canton requires.

R.C. 9.481’s lack of uniformity is discussed more thoroughly below in the discussion of the Ohio Constitution’s Uniformity Clause. R.C. 9.481 is non-uniform because

- it does not apply to a class of employees oddly defined as “volunteers”—any employee less than permanent full-time, without any rational basis.
- R.C. 9.481(B)(2)(b) also makes it *optional* for municipalities to restrict residency as far as adjacent counties, raising further issues about uniformity.
- These issues are exacerbated by the variation in county size.
- R.C. 9.481 does nothing regarding existing residency requirements that the Revised Code contains that are placed on certain classes of local employees where city charters are not in place: e.g., village administrators, municipal public-safety directors, village marshals, street commissioners, and village fiscal officers.¹¹³

iii. R.C. 9.481 does not set forth police, sanitary, or similar regulations, but just purports to grant and limit the power of municipalities to do the same, and is thus not a “general law” as Canton requires.

“The words ‘general laws’ as set forth in Section 3 of Article XVIII of the Ohio Constitution mean statutes setting forth police, sanitary, or similar regulations and not statutes that purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations.”¹¹⁴ The *Lima* court, thus held that “the critical inquiry” in evaluating R.C. 9.481 “is whether allowing political subdivision employees to reside in any part of the state is an ‘overriding state interest.’”¹¹⁵

The *Lima* court concluded that R.C. 9.481 is not founded on an “overriding state interest.” The court reasoned that “there is no constitutional right to choose where one lives,

¹¹³ See Uniformity Clause discussion, below.

¹¹⁴ *West Jefferson*, supra, ¶ 3 of syllabus.

¹¹⁵ *Lima* at ¶ 73.

and, at the same time, demand employment from an unwilling employer.”¹¹⁶ For cities like Lima, however, the interest in establishing residency is substantial for the reasons outlined in *Canton* prong 2 above, and many others that the *Lima* court recognized.¹¹⁷ The *Akron* and *Cleveland* appeals courts followed this analysis.¹¹⁸

R.C. 9.481 would fail even if it were considered an exercise of police power because the statute expressly purports to limit local authority¹¹⁹ to adopt residency qualifications—yet also purports to grant authority for the City to adopt adjacent-county residency qualifications. By creating the exception, the statute betrays its effort to limit local authority.¹²⁰

iv. R.C. 9.481 does not prescribe a rule of conduct on citizens generally, and is thus not a “general law” as Canton requires.

R.C. 9.481 on its face does not regulate citizens’ conduct generally. A general law “is not a limitation upon law making by municipal legislative bodies and has no special relation to any of the political subdivisions of the state.”¹²¹ Yet R.C. 9.481 just limits municipalities’ power, i.e., it has a special relationship to the state political subdivisions. It thus fails *Canton*’s fourth prong as to whether it is a “general law.”¹²²

¹¹⁶ *Id.* at ¶ 76.

¹¹⁷ *Id.* at ¶ 77. *See also Linndale*, 5 Ohio St.3d at 55 (holding that the traffic-regulation statute at issue, though an exercise of police power, is unconstitutional because, among other deficiencies, it represented an improper attempt to limit local legislative powers).

¹¹⁸ *Akron* at ¶ 32; *Cleveland* at ¶¶ 34–37.

¹¹⁹ R.C. 9.481(B)(1).

¹²⁰ *Lima* at ¶ 78 (citing *Canton* for principle that providing exceptions defeat the State’s stated purpose and the law thus served only to limit the legislative authority of municipalities). *See also City of Columbus v. Molt* (1973), 36 Ohio St.2d 94 (holding that statute mandating that no local authority could enact or enforce rules or regulations in conflict with the state’s traffic statutes was not a general law as that term is used in Ohio Constitution Art. XVIII, § 3).

¹²¹ *Lima* at ¶¶ 81–82 (citing *Canton*, 2002-Ohio-2005 at ¶¶ 34, 38 (internal quotations, brackets, and citations omitted) and numerous other cases).

¹²² *Lima* at ¶¶ 83–84; *Akron* at ¶¶ 32–33; *Cleveland* at ¶ 39 (“On its face, R.C. [9.481] imposes a restriction on the conduct political subdivisions, not on that of citizens generally; therefore it

3. Courts have held numerous other issues relating to municipal employment, like the residency qualification, to be within municipal home rule's scope.

The Ohio Supreme Court on countless occasions has held that a city's authority to establish its relationship with its employees derives from the power of local self-government. "It would seem that if a municipality is to possess such powers [of local self-government], one of them should be the authority to determine the method of selection that probably would be most effective and desirable in meeting the needs of that particular community."¹²³ The precedent is broad, but it generally reflects the power of municipalities to choose their employees and determine their responsibilities. "A municipality is considered to have general home-rule authority to regulate the appointment, removal, qualifications, compensation, and duties of its officers and employment."¹²⁴ Municipalities have the home-rule power to

- retain discretion over the promotion of public-safety personnel.¹²⁵
- select their officers. "Under Sections 3 and 7, Article XVIII, as so amended, municipalities are authorized to determine what officers shall administer their

fails to meet the fourth prong of the *Canton* general law test.") *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, at ¶¶ 34–35 (citing *Youngstown v. Evans* (1929), 121 Ohio St. 342, 345 (state statute prohibiting transportation of intoxicating beverages that provided different penalties than local ordinance for the same offense "not a general law in the sense of prescribing a rule of conduct upon citizens generally. It is a limitation upon law making by municipal legislative bodies."); *West Jefferson*, 1 Ohio St.2d at 117 (affirming requirement in *Garcia*, 63 Ohio St.2d at 271 and *Linndale*, 85 Ohio St.3d at 55 (holding that the statute in question, prohibiting local law-enforcement officers from certain localities issuing speeding and excess-weight citations on interstate freeways did not prescribe a rule of conduct upon citizens generally)).

¹²³ *State ex rel. Lynch v. Cleveland* (1956), 164 Ohio St. 437, 440.

¹²⁴ *City of Bay Village Civil Serv. Comm'n*, 28 Ohio St. 3d at 216.

¹²⁵ *State ex rel. Bardo*, 37 Ohio St. 3d 106; see also *State ex rel. Regetz v. Cleveland Civil Serv. Comm'n* (1995), 72 Ohio St. 3d 167, 169 ("The appointment of officers within a city's police department constitutes an exercise of local self-government within the meaning of the Home Rule Amendment."); *State ex rel. Meyers v. City of Columbus* (1995), 71 Ohio St. 3d 603, 606 (same); *State ex rel. Bednar v. City of North Canton* (1994), 69 Ohio St. 3d 278, 280 (same); *State ex rel. East Cleveland Ass'n of Firefighters, Local 500 v. City of East Cleveland* (1988), 40 Ohio St. 3d 222 (upholding municipal ordinance granting mayor discretion in deciding to fill fire-department vacancy); *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, syl. 1.

government¹²⁶

- establish the compensation of their employees.¹²⁷
- determine the duties of their public-safety personnel and the make-up of their civil-service commissions.¹²⁸

Municipalities must also have the home-rule power to choose their employees from among residents (or prospective residents) of the municipality. The selection of employees is inherently local and the essence of municipal self-government.

In *City of Kettering v. State Employment Relations Bd.*,¹²⁹ the Court noted that public employees' right to collective bargaining was a matter of statewide concern, but ultimately determined that the act was an exercise of state police power.¹³⁰ As such, the *Kettering* decision is distinguishable from the residency dispute in that neither the residency requirement nor R.C. 9.481 is an exercise of police power. And the *Kettering* Court's statewide-concern analysis

¹²⁶ *Fitzgerald v. City of Cleveland* (1913), 88 Ohio St. 338, 352 syllabus at ¶ 2 (“We have seen that the method of electing officers is a governmental function or power, and when the officer to be elected is chosen solely for the performance of a municipal duty, it is a municipal affair.”; similar commentary regarding appointment of officers); *State ex rel. Frankenstein v. Hillenbrand* (1919), 100 Ohio St. 339, 343 (same).

¹²⁷ *City of Bay Village Civil Serv. Comm'n*, 28 Ohio St. 3d at 216; *State ex rel. Vukovich v. Youngstown Civil Serv. Comm'n* (1982), 69 Ohio St. 2d 16, 19. “The right of a municipality to determine the compensation of its employees is, without question, a power of local self-government.” *United Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 377 v. City of Youngstown* (1980), 64 Ohio St. 2d 158, 160 (city may limit the civil-service-commission's authority and thus commission had no authority to standardize city-employee wages under state statute) (citing *State ex rel. Mullin v. City of Mansfield* (1971), 26 Ohio St. 2d 129); see *Northern Ohio Patrolmen's Benevolent Ass'n* (1980), 61 Ohio St. 2d at syl. 2 (non-chartered municipalities have home-rule power to set compensation paid to employees on leave of absence as military members).

¹²⁸ *Harsney v. Allen* (1953), 160 Ohio St. 36, 41 (“organization and regulation of [a city's] police force, as well as its civil service functions, are within a municipality's powers of local self-government”); *City of Bay Village Civil Serv. Comm'n*, 28 Ohio St. 3d at 217 (“investigation, appointment and removal of members of these [civil service] commissions are matters of purely internal functioning”).

¹²⁹ (1986), 26 Ohio St. 3d 50.

¹³⁰ *City of Kettering*, 26 Ohio St. 3d at 55.

is also distinguishable. The state statute arose after a turbulent period in which “there had been over four hundred public employee work stoppages in Ohio between 1973 and 1980.”¹³¹ The only issue before the *Kettering* court was the Public Employees Collective Bargaining Act and the City of Kettering’s conflicting ordinance, which sought to eliminate supervisory personnel from collective bargaining.¹³²

Although the Court used the words “public-sector labor relations,” subsequent Supreme Court home-rule decisions show that the Court did not intend the *Kettering* holding to be read as broadly as the State suggests. The Supreme Court’s issued its *Kettering* decision in 1986, the same year as the Court issued its home-rule decision in *State Pers. Bd. of Review v. City of Bay Village Civil Serv. Comm’n*,¹³³ which distinguished the *Kettering* decision. There, the Court held that the “investigation, appointment and removal of members of [civil service] commissions are matters of purely internal functioning as opposed to the public employee collective bargaining plan involved in *Kettering*.”¹³⁴ The *Kettering* decision must not be cited out of context, and does not apply to the narrow and local issue of municipalities’ selection of their own employees. The residency qualification does not reflect any general or valid statewide concern. Ohio municipalities have home-rule power to determine matters regarding municipal employment, such as the residency qualification.

E. R.C. 9.481 violates the Ohio Constitution’s Uniformity Clause.

Under Article II, § 26 of the Ohio Constitution, all laws must have “a uniform operation

¹³¹ *Id.*

¹³² *Id.* at 51.

¹³³ (1986), 28 Ohio St. 3d 214.

¹³⁴ *Id.* at 217 (emphasis added).

throughout the State.”¹³⁵ The constitutionality of legislation under this clause is determined by “a two-part test: (1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state.”¹³⁶

Laws may not establish arbitrary or “unnecessarily restricted” operative provisions.¹³⁷ The Uniformity Clause “does not forbid different treatment of various classes or types of citizens, but does prohibit nonuniform classification if such be arbitrary, unreasonable or capricious.”¹³⁸ “In its clearest sense, the provision involved bears every evidence of special legislation affecting, to their detriment, only one group of employees while granting to all other employees in the state, likely situated, the full protection and rights afforded by the Act.”¹³⁹

R.C. 9.481 does not operate uniformly:

- R.C. 9.481’s restrictions on municipal power apply only to permanent, full-time employees.¹⁴⁰ The statute precludes the City from choosing its full-time, full-year employees from only those who are willing to reside in the City. The City could, however, require its volunteers, part-time employees, temporary employees, and seasonal employees to live in the City. This distinction is arbitrary, unreasonable, and capricious. It categorizes and places a greater burden on these part-time employees who hold a lesser relationship to the City and would deny them the purported (and invalid) “protections” of R.C. 9.481. There is no logical basis to exclude volunteers, part-time employees, temporary employees, and seasonal employees from the statute. As such, R.C. 9.481 does not operate uniformly throughout the State.

¹³⁵ OHIO CONST. art. II, § 26 (the “Uniformity Clause”); *Desenco v. City of Akron* (1999), 84 Ohio St. 3d 535, 541, 1999-Ohio-368 (law must be general and operate uniformly).

¹³⁶ *Desenco*, 84 Ohio St.3d at 541 (citing *Put-In-Bay Island Taxing Dist. Auth. v. Colonial, Inc.* (1992), 65 Ohio St.3d 449, 451; *Austintown Twp. Bd. of Trustees v. Tracy* (1996), 76 Ohio St.3d 353, 356–57; *State ex rel. Zupancic v. Limbach* (1991), 58 Ohio St.3d 130, 137–38).

¹³⁷ *State ex rel. Stanton v. Powell* (1924), 109 Ohio St. 383, 385 (“A law operates as an unreasonable classification where it seeks to create artificial distinctions where no real distinction exists.”).

¹³⁸ *Canton v. State* (2002), 95 Ohio St. 3d at 154; *See also State ex rel. Dayton Fraternal Order of Police, Lodge No. 44 v. State Employment Relations Bd.* (1986), 22 Ohio St. 3d 1, 12 (holding that it is an unconstitutional violation of the Uniformity Clause when a State statute relating to collective bargaining, excludes supervisors).

¹³⁹ *Dayton*, 22 Ohio St.3d at 12.

¹⁴⁰ R.C. 9.481(A), (B).

- R.C. 9.481 also arbitrarily permits some municipalities in Ohio to limit employees to live as far as in adjacent counties, thus creating further uniformity problems.
- R.C. 9.481 ignores and excludes existing residential restrictions in the Revised Code, thus creating even greater uniformity problems:
 - R.C. 3.15 (all elected officials shall be a resident of the political subdivision where elected, judges are to be residents of the territory of the Court, any ward representative shall be a resident of the ward, and each member of a board of education of a city school district shall be a resident of the subdistrict represented);
 - R.C. 733.262(D) (a village fiscal officer must become a village resident within six months of appointment);
 - R.C. 735.01 (the director of each city’s department of public service is to become a resident of the city within six months of appointment);
 - R.C. 735.271 (a village administrator shall become a resident of the village within six months);
 - R.C. 735.31 (a street commissioner shall become a resident of his municipal corporation within six months of appointment);
 - R.C. 737.01 (the director of each city’s department of public safety is to become a resident within six months of appointment);
 - R.C. 737.15 (a village marshal shall become a resident within six months of appointment);
 - R.C. 2701.04 (any judge who removes his residence from his district is deemed to have resigned his position); and
 - R.C. 3301.03 (each member of the state board of education must reside in the district from which elected).

So R.C. 9.481, being arbitrary, unreasonable, and capricious in its non-uniformity is unconstitutional under Article II, § 26, the Uniformity Clause.¹⁴¹

¹⁴¹ See *Cleveland* at ¶ 50 (“We do, however, struggle to accept the State’s argument that R.C. 9.481 is uniform in its application when it carves out an exception for a category of volunteers, which includes paid part-time and temporary employees.”)

F. R.C. 9.481's arbitrary provisions violate due process.

“Generally, a legislative enactment will be deemed valid on due process grounds

- (1) if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and
- (2) if it is not unreasonable or arbitrary.”¹⁴²

R.C. 9.481 does not satisfy either prong of the due-process test. It is unrelated to “the public health, safety, morals or general welfare” of the public, or of employees generally. And, as also explained above, the statute is unreasonable and arbitrary in its limitations on which employees are subject to the statute and on the distances within which municipalities may require their employees to live. There is no reason to treat part-time, temporary, and seasonal employees differently, nor to allow municipalities to place more restrictive residential requirements on such employees. In addition, the statute prescribes an unreasonable and arbitrary limitation on the distances municipalities may limit employees in their commutes.¹⁴³ Municipalities may require employees to live in any Ohio county adjacent to the municipality's county.¹⁴⁴ The distances, therefore, vary widely by the counties' sizes and the cities' locations within their counties. Some municipalities can effectively require their (full-time) employees to live within 50 miles while others only within 150 miles, depending on these factors. Thus, R.C. 9.481 arbitrarily infringes on due process.

¹⁴² *Hausman v. City of Dayton* (1995), 73 Ohio St. 3d 671 (municipal ordinance placing burden on any mortgagee, and not just those in possession, to remedy nuisances on mortgaged property is arbitrary and unconstitutional); *Mominee v. Scherbarth* (1986), 28 Ohio St. 3d 270 (state statute of limitations including tolling provision for minors is substantially related to its proper goals of reducing insurance premiums, limiting physician work stoppages, and, therefore, preserving public health and safety, but tolling provision is unreasonable and arbitrary).

¹⁴³ See R.C. 9.481.

¹⁴⁴ *Id.*

G. R.C. 9.481 infringes the City's freedom to contract.

Both the U.S. and Ohio constitutions protect the City's freedom to contract.¹⁴⁵ Under these provisions, the State may not pass a law that would limit the City's right to contract with its employees. The freedom to contract provided by Article II, § 28 may be limited only by police-power legislation that "bears a real and substantial relation to the public health, safety, morals or general welfare of the public and . . . [that] is not unreasonable or arbitrary."¹⁴⁶ R.C. 9.481 meets none of these criteria.

R.C. 9.481 limits the City's authority to enter into a contract with its employees. If the law were valid, the City would be prohibited from entering into an agreement with its employees regarding the employees' residence. But R.C. 9.481 is not an exercise of police power. Police powers are evidenced by regulations "designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health."¹⁴⁷ As shown above, R.C. 9.481 is also unrelated to public welfare, safety, or health and, even if it was a police power, the statute bears no real or substantial relationship to "public health, safety, morals or [the] general welfare of the public." R.C. 9.481 only applies to municipal employees and is limited in effect to applicants' choices as to where they desire to work. Employees' residency choices, made prior to their employment, do not affect the public welfare. Neither health nor welfare is impacted.

R.C. 9.481 is unreasonable and arbitrary. The statute places irrational differences on municipalities based on the size of the counties involved and on the categories of employees that

¹⁴⁵ OHIO CONST. art. II, § 28 ("The [G]eneral [A]ssembly shall have no power to pass . . . laws impairing the obligation of contracts . . ."); U.S. CONST. art. I, § 10 ("No state shall . . . pass any . . . Law impairing the obligation of Contracts . . .").

¹⁴⁶ *Ohio Edison Co. v. Power Siting Comm'n of Ohio* (1978), 56 Ohio St. 2d 212, 217-18 (internal citations omitted).

¹⁴⁷ *Wessell v. Timberlake* (1916), 95 Ohio St. 21, 34.

R.C. 9.481 permits be subjected to residency requirements. R.C. 9.481 may not limit the City's freedom to establish its relationship with applicants for City employment or its employees.

VI. CONCLUSION

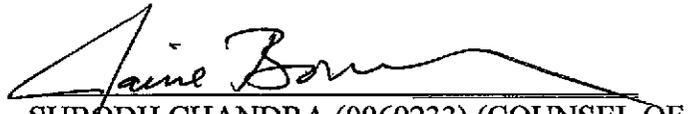
For over 20 years, following an overwhelming vote of Youngstown's voters, the City of Youngstown, Ohio (the "City") has chosen municipal employees—who are paid from the City's treasury—from among those who lived or were willing to live in the City. Because City government serves the people of Youngstown, the City chooses government employees who are invested in the City's well being, can better understand the issues facing Youngstown's people (because they are Youngstown's people), and are more easily accessible in case of emergency. With R.C. 9.481, the State has decided to impose its own beliefs on Youngstown voters' and quash their democratically enacted decision about the qualifications they believe critical for the employees that serve them.

Ohio's Constitution, however, grants Ohio municipalities "home-rule power": uniquely broad powers over matters that are inherently local. Municipalities, and not the State, control matters of local self-government. Under Ohio's Constitution and Supreme Court precedent, State efforts to meddle with municipal authority in this area are improper. And, Article II, § 34's general-welfare clause provides no authority for the state's efforts because § 34 is limited to working conditions, not qualifications for employment.

This Court should thus affirm judgment for the City of Akron.

Respectfully submitted,

Iris Torres Gugliucello (per consent)
IRIS TORRES GUGLUCELLO (0019416)
Director of Law
ANTHONY J. FARRIS (0055695)
Deputy Director of Law
City of Youngstown Department of Law
City Hall of Youngstown
26 S. Phelps St., 4th Floor
Youngstown, OH 44503
Telephone: 330.742.8874
Fax: 330.742.8867
E-mail: irisg@CityofYoungstownOH.com
E-mail: ajf@CityofYoungstownOH.com


SUBODH CHANDRA (0069233) (COUNSEL OF
RECORD)
JAIME BOUVIER (0071426)
THE CHANDRA LAW FIRM, LLC
1265 W. 6th St., Suite 400
Cleveland, OH 44113-1326
Telephone: (216) 578-1700
Facsimile: (216) 578-1800
Email: Subodh.Chandra@StanfordAlumni.org
Counsel of record

Attorneys for Appellant the City of Youngstown

PROOF OF SERVICE

I certify that on August 26, 2008 my office sent a copy of the foregoing Amicus Curiae Brief via regular US mail to:

Deborah Forfia
Assistant Law Director
City of Akron Law Dept.
161 S. High Street, Suite 202
Akron, OH 44308-1655
Counsel for Appellees City of Akron and Donald Plusquellic

Benjamin Mizer
Deputy Solicitor
Office of Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215
Counsel for the appellant State of Ohio

Susannah Muskovitz
Faulkner Muskovitz & Phillips, LLP
820 W. Superior Ave., Suite 900
Cleveland, OH 44113
*Counsel for appellants Paul Hlynsky, Phil Gauer,
Fraternal Order of Police (Akron Lodge No. 7),
and Akron Firefighters Assoc., (IAFF Local 330)*

Warner Mendenhall
190 N. Union Street, Suite 201
Akron, OH 44304
Counsel for Jon Burdeshaw (Amicus Curiae on behalf of Appellant)

Paul L Cox
222 E. Town Street
Columbus, OH 43215-4611
Counsel for Fraternal Order of Police of Ohio, Inc. (Amicus Curiae on behalf of Apellant)

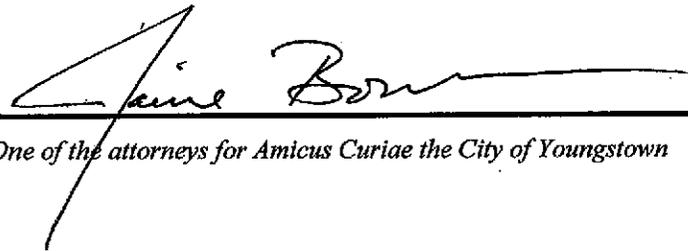
Henry Allen Arnett
Livorno & Arnett Co. LPA
1335 Dublin Road, Suite 108B
Columbus, OH 43215
Counsel for Ohio Assoc. of Firefighters (Amicus Curiae on behalf of Appellant)

Adam Loukx
Sr. Attorney
City of Toledo
One Govt. Center, Suite 2250
Toledo, OH 43604
Counsel for City of Toledo (Amicus Curiae on behalf of Appellee)

Stephen Byron
Byron & Byron Co., LPA
4230 State Route 306, Suite 240
Willoughby, OH 44094
Counsel for Ohio Municipal League (Amicus Curiae on behalf of Appellee)

And via overnight mail to:

Clerk
Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, OH 43215-3431



One of the attorneys for Amicus Curiae the City of Youngstown

Exhibit 1

CERTIFICATE OF RESULT OF ELECTION ON QUESTION OR ISSUE

Revised Code, Section 3501.11

State of Ohio

County of MAHONING

The Board of Elections of MAHONING County hereby

certifies that at the election held in CITY OF YOUNGSTOWN
(Subdivision)

in said county on NOVEMBER 4, 1986 the
(Date of election)

vote cast on the following issue was as follows:

Issue Y-E SECTION 52, CIVIL SERVICE, Add Sub-section (C).

To provide that all employees, elected officials and all appointees to
(Tax levy, bond issue, local option, etc. — describe fully)
commissions or boards shall be residents and domiciled in the City of
Youngstown.

Votes FOR THE AMENDMENT 19,343 *
(For, yes, etc.—as on ballot) (Number)

Votes AGAINST THE AMENDMENT 6,896
(No, against, etc.—as on ballot) (Number)

Total vote cast on issue: 26,239
(Number)

Witness our official signatures at YOUNGSTOWN, Ohio in

said county, this 21st day of NOVEMBER, 1986

Don L. Davis Chairman
Russell J. Bradley
William C. Zimmerman
Paul M. Lindemann

Attest: James W. Dellick
Director

BOARD OF ELECTIONS

MAHONING County, Ohio

ELECTION A'

CHARTER AMENDMENTS

CITY OF YOUNGSTOWN

\$1,000 to \$5,000 spending

<input checked="" type="checkbox"/> Against	15,425
For	11,009

Finance Director

<input checked="" type="checkbox"/> For	14,137
Against	11,391

Council pres. qualifications

<input checked="" type="checkbox"/> For	17,169
Against	7,935

Residency requirements

<input checked="" type="checkbox"/> For	19,340
Against	6,895

Office terms for commissions

<input checked="" type="checkbox"/> For	18,163
Against	7,767

Office terms for health board

<input checked="" type="checkbox"/> For	17,974
Against	6,743

Office terms for park board

<input checked="" type="checkbox"/> For	18,038
Against	7,872

Mayor's salary

<input checked="" type="checkbox"/> For	14,660
Against	11,245

Creating new departments

<input checked="" type="checkbox"/> Against	14,859
For	10,005

Review committee

<input checked="" type="checkbox"/> For	16,781
Against	7,978

Delete charitable institutions

<input checked="" type="checkbox"/> For	14,215
Against	9,476

Delete employment division

<input checked="" type="checkbox"/> For	14,527
Against	9,969

Delete fire, police pensions

<input checked="" type="checkbox"/> For	14,230
Against	10,667

Delete sexist language

<input checked="" type="checkbox"/> For	16,058
Against	8,170

TOTAL OPTIONS

CHARTER AMENDMENT

CITY OF YOUNGSTOWN

Four-year terms

<input checked="" type="checkbox"/> Against	13,855
For	13,070

Council salaries

<input checked="" type="checkbox"/> Against	12,815
For	12,310

LEVIES

SECTION 5

That an amendment shall be submitted to the electors of the City of Youngstown for adoption or rejection, at a Regular Municipal Election to be held on November 4, 1986, pursuant to Section 120 of the Youngstown Home Rule Charter and Article XVIII, Sections 8 and 9 of the Constitution of the State of Ohio, to amend Section 52, of the existing Youngstown Home Rule Charter, to add Sub-Section C., to read as follows:

CIVIL SERVICE

Section 52. All of the provisions of the Revised Code of the State of Ohio relating to Municipal Civil Service are hereby adopted and made a part of this Charter, excepting that all positions in the public service of the City of Youngstown shall be classified as follows:

A. The unclassified service shall include:

- (1) All officers elected by the people.
- (2) Chief of Police.
- (3) Chief of Fire Department.
- (4) Commissioner of Water.
- (5) Members of Board of Health.
- (6) Members of the Park and Recreation Commission.
- (7) Commissioner of Engineering.
- (8) Commissioner of Public Buildings.
- (9) Director of Law and Assistants.
- (10) Director of Finance.
- (11) Clerk of Council.
- (12) One Secretary for Head of a Department.
- (13) Unskilled Labor.
- (14) Architects, Civil Engineers and other professional men not in the regular employment of the City may be engaged for special work requiring experience and knowledge by the officers and boards in charge of the several departments, provided that the approval of the Mayor and of Council must first be secured in all cases, except in the case of the employees of the Park and Recreation Commission, in which instance the approval of the Mayor and Council shall not be required.

B. The classified service shall comprise all positions not specifically included in the Charter in the unclassified service.

*C: All employees elected officials and all appointees to commissions or boards shall be residents and domiciled in the City of Youngstown.

*AMENDMENT

That it is recommended that the amendment herein proposed shall be designated on the ballot by its descriptive title as hereinabove set forth. The adoption of such amendment by its descriptive title shall have the effect of adopting the amendment in full, as proposed by this ordinance. The form of the ballot to be used in submitting the provisions of said amendment by its descriptive title at said Regular Municipal Election shall be as follows:

Exhibit 2

Section 52.

All of the provisions of the Revised Code of the State of Ohio relating to Municipal Civil Service are hereby adopted and made a part of this Charter, excepting that all positions in the public service of the City of Youngstown shall be classified as follows:

A. The unclassified service shall include:

- (1) All officers elected by the people.
- (2) Chief of Police.
- (3) Chief of Fire Department.
- (4) Commissioner of Water.
- (5) Members of Board of Health.
- (6) Members of the Park and Recreation Commission.
- (7) Commissioner of Engineering.
- (8) Commissioner of Public Buildings.
- (9) Director of Law and Assistants.
- (10) Director of Finance.
- (11) Clerk of Council.
- (12) One Secretary for Head of a Department.
- (13) Unskilled Labor.

(14) Architects, Civil Engineers and other professionals not in the regular employment of the City may be engaged for special work requiring experience and knowledge by the officers and boards in charge of the several departments, provided that the approval of the Mayor and of Council must first be secured in all cases, except in the case of the employees of the Park and Recreation Commission, in which instance the approval of the Mayor and Council shall not be required.

B. The classified service shall comprise all positions not specifically included in the Charter in the unclassified service.

C. All employees, elected officials and all appointees to commissions or boards shall be residents and domiciled in the City of Youngstown.

D. All appointees to boards and commissions authorized by the Charter shall serve no more than two (2) complete consecutive terms of office. They will be eligible for appointment after an intervening term.

(Amended November 4, 2003.)

Sections 53 to 68. (Repealed November 7, 1933.)

163.37 REQUIREMENTS OF RESIDENCE.

All employees of the City shall reside within the City limits thereof, except temporary employees where the work engaged in may require special skill and expert knowledge.

(1967 Code Section 32.04)

Exhibit 3

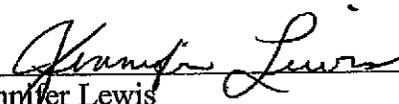
AFFIDAVIT

State of Ohio)
)
County of Mahoning) SS

I, Jennifer Lewis, being first duly sworn, state that I have personal knowledge of all of the information contained in this affidavit, and I am competent to testify to the following matters:

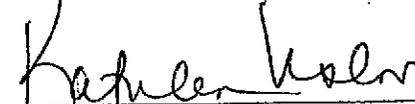
1. I was hired by the City of Youngstown, Ohio ("City") on August 22, 2001, and I have at all times been employed by the City as its Civil Service Administrator;
2. As Civil Service Administrator, I perform or directly oversee all matters relative to the testing and employment of applicants for classified civil service positions with the City of Youngstown, and I maintain an employee file for all City employees which includes their appointment letters;
3. All applicants for employment with the City are notified of the City's residency laws which require employees to live in the City of Youngstown, or move into the City limits within a specified number of days of employment;
4. Notification of the City residency laws are attached to all applications for classified civil service employment, and are included in all notices of civil service examinations, all newspaper advertisements for testing, and all letters of appointment to any position with the City of Youngstown.

Further, affiant sayeth naught.



Jennifer Lewis

Sworn to, and subscribed before me this 26 day of March, 2007.



Notary Public
No objection

Exhibit 4



Where to live; where to work

Date

July 16, 2006

It's no secret that the Ohio Supreme Court is going to have to decide the validity of a new state law giving municipal employees the right to live outside the cities where they work.

In the meantime, some cities and some employee unions have filed suits aimed at getting the issue to the Supreme Court. That will take anywhere from nine months to two years.

Now, one Youngstown police officer appears to be daring the city to fire him. Patrolman Daniel **Tickerhoof**, 32, has notified the city that he has moved to Canal Fulton.

Tickerhoof's case may turn out to be one of the more interesting tests.

"Mapquest" places the distance between Canal Fulton and Youngstown's City Hall at 64 miles and estimates driving time at an hour and 15 minutes. That's assuming no orange barrel back-ups on I-76 through Akron or I-77 through Canton.

A threat to efficiency

How is a city to operate if it can't be confident that its firefighters, police officers, salt-truck drivers or water and sewerage employees will respond to an emergency call in less than an hour?

The court is going to have to discern what the General Assembly was thinking when it passed this law. In Youngstown's case, the court will also have to consider, among other factors:

U Youngstown's residents voted in 1986 to require employees to live in the city.

U Every employee who has been hired since (including **Tickerhoof**) has taken the job with the understanding that he must live in the city.

U As a charter city, Youngstown residents-- not politicians from one end of the state to another -- should be deciding how to run its affairs (absent a finding that the city is behaving in an unconstitutional manner -- and municipal residency requirements have been found to be constitutional by the U.S. Supreme Court).

The city should take its time and conduct a thorough investigation of **Tickerhoof's** circumstances. Let him drive 130 miles a day using \$3-a-gallon gas, adding more than two hours to his work shift. Maybe he'll find living in Canal Fulton is worth it. Maybe he won't. And maybe he'll have to decide which he likes better -- his home or his job -- when the eventual firing notice arrives.

If he likes his home better, he'll have to decide how much faith he has in the ability of his union's lawyers to convince the Supreme Court that the Ohio General Assembly should be able to tell the people of Youngstown that they can't decide that their employees should also be their neighbors.

Appendix 11

© 2006 Vindy.com. All rights reserved. A service of The Vindicator.
103 Vindicator Square. Youngstown, OH 44503

Exhibit 5

requirement on the City of Youngstown.



Robert Simons

SWORN to before me and subscribed in my presence March 19, 2007.



Notary Public

JOEL H. LEAVITT
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES NOV. 5, 2010
RECORDED IN CUYAHOGA COUNTY

Expert Report of Robert A. Simons, Ph.D.

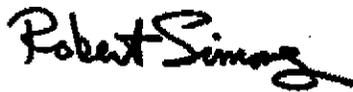
Robert Simons and Associates, Inc.

For

**City of Youngstown, Department of Law
Chandra Law Firm**

**EFFECT OF RESCINDING
CITY EMPLOYEE RESIDENCY REQUIREMENTS
ON THE CITY OF YOUNGSTOWN:
ECONOMIC AND FISCAL IMPACTS**

Signed this 27th day of February 2007, at Cleveland, Ohio.



Robert A. Simons, Ph.D.

EXPERT REPORT OF ROBERT A. SIMONS, PH.D.

My name is Robert A. Simons, and I have personal knowledge about the matters contained in this expert report because of my academic qualifications, my knowledge and experience, and the investigative activities I have undertaken in regards to this matter. I submit this expert report in support of the City of Youngstown's claims that enactment of ORC section 9.481 prohibiting local municipalities from maintaining employee residency requirements would have a substantial negative effect on the City's economy and fiscal position.

I have a Ph.D. in City and Regional Planning, a Master's degree in Economics, and a second Master's degree in City and Regional Planning, all from the University of North Carolina at Chapel Hill. I also have a Bachelor of Arts degree in Anthropology from Colorado State University. I have published over 30 articles in peer-reviewed journals, and have also published two books on matters related to real estate markets. A recent curriculum vitae is appended to this report as Exhibit 1. It contains a list of articles I have published in recent years (see pages 38-41 of that exhibit), as well as a list of other expert witness assignments (see pages 49-53).

I am a Professor of Urban Planning and Real Estate Development in the Levin College of Urban Affairs at Cleveland State University (CSU) in Cleveland, Ohio. At CSU, I teach graduate classes in real estate market analysis and finance, public finance and budgeting, urban planning, Ph.D. research methods, and environmental finance. For several years I was also the director of the Master's degree program in Urban Planning, Design and Development, and the director of the Master of Arts in Environmental Studies program. I am also the Coordinator of the graduate certificate program in Urban Real Estate Development and Finance. I have been a Fulbright Scholar, and have taught and conducted research in other countries on several occasions on matters related to real estate and housing markets.

OVERVIEW

I have been retained by the City of Youngstown's counsel in this case, and my hourly rate is \$250. I have reviewed various publicly available materials concerning this case, and items related to the real estate market in and around Youngstown, Ohio. Attached as Exhibit 2 is a list of materials I reviewed in connection with this engagement prior to preparing and signing this report. All of the facts I have reviewed or relied upon are of a type normally relied upon by experts in my field.

I have been asked by City of Youngstown's counsel to determine the economic damages to the Youngstown economy and fiscal position resulting from rescinding the employee residency requirement.

SUMMARY OF MY OPINION

Theory and empirical evidence from peer-reviewed published literature indicate that if the employee residency requirements are lifted, a substantial number of City employees would move from Youngstown to another jurisdiction. This would have a

negative effect on housing markets, and also on the budgetary condition of the City of Youngstown.

In November of 2006 we surveyed Youngstown city employees subject to the residency requirement and found, based on 69 completed surveys, and to a reasonable degree of scientific certainty, that approximately two-thirds (67%) would not have located in Youngstown if the requirement had not been in effect at the time of their hiring. This survey result is consistent with actual practice in the Cleveland and Toledo public school districts, where about 60% of the teachers live outside the city in each case. Additional survey questions allowed us to project that, conservatively, 60% of City employees would move out of Youngstown within a seven-year period following rescission of the employee residency law.

We studied the effects that this would have on the housing markets and the City of Youngstown's fiscal condition for two study areas. The "conservative" study area is smaller, and contains six ZIP Codes on the west and south sides of town, where approximately 80% of City employees reside (MLS Areas 3 and 4). The "higher-range" model extrapolates the survey and housing model results to the entire city of Youngstown, and also considers future City employees, indirect effects such as the effect of lost population and spending power on retail and service employment.

It is my opinion that, if the residency law requirement were removed, the conservative study area would suffer a loss of approximately 500 households over the next decade, representing a population loss of 1,350. This would have a substantial negative effect on the housing market in those neighborhoods, and the average sales price would be expected to decrease by at least 17% from its current level of \$43,100 to a lower level of about \$35,500 during the year immediately following lifting of the residency requirement. The local housing market is expected to remain depressed by at least 10% for three years. Over the ten-year period, the average reduction in housing price, attributable solely to the residency requirement factor, is approximately 4%. The effect is mainly a function of the additional real estate listings that would come onto an already weak housing market.

This decreased housing value would translate into a substantially lower property tax base (a reduction of about \$95 million within several years) in the "conservative" study area and thus into a reduction in tax collections for the City of Youngstown. The City could be expected to experience reductions in property tax and income tax revenue peaking at about \$190,000 per year in about five years, with continuing losses of \$100,000 per year and an aggregate present value loss of \$867,000 over the next decade.

For the higher-range study applicable to the entire City of Youngstown, if the residency law requirement were removed, the entire City would suffer a loss of approximately 620 households, and a population drain of about 1,650 residents. This would have a substantial negative effect on the housing market in the city as a whole, and the average sales price would be expected to decrease about 23% from its current level of \$41,500 to a lower level of approximately \$31,900 during the year immediately following lifting of the residency requirement. The local housing market is expected to remain depressed by at least 15% for several years. Over the ten-year period, the average reduction in housing price, attributable solely to the residency requirement factor, would be approximately 8.5%. The effect is mainly a function of the additional real estate

listings that would come onto an already weak housing market, and a reduction in demand from future City employees that would likely live elsewhere.

This decreased housing value would translate into a substantially lower property tax base (a reduction of over \$170 million within several years) and thus into a reduction in tax collections for the City of Youngstown. The City could be expected to experience reductions in property tax and income tax revenue peaking at approximately \$320,000 per year in about five years, with continuing losses of \$200,000 per year and an aggregate present value loss of \$1.5 million over the next decade.

The loss of demand for higher-priced housing would also be substantial. The number of City workers expected to move out of Youngstown under either the conservative or higher-range scenario far exceeds the annual number of new housing units currently being built in the City, and is expected to have a strong negative effect on housing starts over the next several years. Also, because City workers have a much higher median household income (\$63,000) than Youngstown residents as a whole (\$28,700), removing the employee residency requirement could lead to a decrease in city-wide average household income of as much as 4% over the next decade, further exacerbating the strains on the City's economy. This income differential raises concerns about the ability of other Youngstown residents to maintain the relatively higher-valued homes now owned by municipal employees, once the City employees move out of Youngstown in response to the removal of the residency requirement. In turn, this uncertainty poses serious implications for the neighborhood stabilization strategies contemplated in the "Youngstown 2010 Citywide Plan," as rescission of the residency requirement can reasonably be expected to put downward pressure on housing values and therefore lead to additional property deterioration, abandonment, and demolition.

Overall, it is my opinion that, to a reasonable degree of scientific certainty, the economic and fiscal effects of removing the employee residency requirement would substantially harm the City of Youngstown.

ORGANIZATION OF THIS REPORT

This report begins with a literature review of articles pertaining to residency requirements, focusing mainly on available literature of labor law. I next cover supply and demand for housing, residential mobility, and impact measurement in other cities, where available. Next, the report moves on to a presentation of the results of a survey of City of Youngstown employees concerning the effect of residency requirement on housing choices. The survey indicates that 60% of City employees would move out of Youngstown within seven years if the residency requirement were not in place. This substantial impact is then traced into the housing markets, as sellers flood the housing market with additional houses for sale and rent. This is expected to have a substantial downward effect on marginal sales prices of housing, at the property, the neighborhood and city level. We further opine on the effect this would have on new housing construction in the city. The final section evaluates the effect this would have on municipal tax collections for property tax and income tax. Exhibits provide supporting material.

LITERATURE REVIEW

Municipal Residency Laws

We were unable to find any peer-reviewed evidence that has specifically attempted to measure housing mobility in the aftermath of ending residency laws. The available academic, peer-reviewed literature is inconsistent regarding the impact of municipal residency laws on wages and employment levels. Existing studies focus on either fire departments, police departments, or both, due to their being a large part of city budget expenditures. Since existing studies reveal a lack of consensus on the issue, each study must be taken at face value based on the research methodology and questions proposed by the researcher. Beyond data limitations in many of the cities, this lack of consensus signifies the lack of generalizability from one study or situation to another study or situation.

Hirsch and Rufolo (1985) studied the impact of residency laws on 72 police departments. The factors used to measure the effect of residency laws include percent of families below the poverty line, percent of general revenue raised locally, county population, median education, rate of population change from 1970 to 1975, and a dummy variable for residency requirement where "1" means that police must live in the city and "0" indicates otherwise. They used separate multivariate statistical analysis on residency laws and on compensation. They hesitantly concluded that residency laws had a negative effect on wages and no effect on the level of employment.

Hirsch and Rufolo (1986) also conducted another study examining the impact of residency laws on 138 fire departments. In this study, their results reflected their previous study on police departments, with a negative effect on wages and no effect regarding employment levels.

Gonzalez et al. (1991) analyzed 138 police departments. They used multivariate statistical analysis to determine that there was no effect on police wages and a positive effect on employment. One further implication from this study is a finding of increased police productivity under residency laws.

O'Brien (1997) examined 132 fire and 133 police departments across the U.S. Using a supply and demand framework and multivariate statistical analysis similar to Gonzalez et al., O'Brien attempts to measure the effects of residency laws. He found that the impact of residency laws was insignificant for compensation and employment.

Mobility/Migration

This section addresses studies on how households decide to move. In a seminal piece, Rossi (1955) used Philadelphia to develop a lifecycle model for housing and mobility. His research resulted in delineating the reasons for why people move based on life-changing events. Moves due to life-changing events (such as eviction, marriage, divorce, or unemployment) were deemed to be forced moves. In the case of marriage, the move is most often to a larger, more expensive home and considers values such as family, schools, and related measures. In the case of divorce and/or unemployment, the move may be to a smaller, less expensive home. Of the people who did not like their current dwelling and were thinking about moving, roughly 50 percent took issue with the size of their home. An additional 14 percent cited neighborhood issues, city services were an issue for 13 percent of the respondents, and another 12 percent responded that cost was an issue.

Tiebout (1956) developed a model on mobility and migration based on several assumptions. These assumptions included (i) complete mobility of consumers with the ability to move to a community reflecting their preferences; (ii) consumers understand revenue and expenditure patterns; (iii) there is a diverse array of communities to move to; (iv) there are no restrictions regarding employment opportunities; (v) public services are relatively confined to the community; (vi) for each desired level of preferences there is a city of the preferable size based on the number of residents and average cost; and (vii) communities below the optimum size aim to attract new residents to lower average costs, while cities above the optimum size attempt to maintain the status quo. Thus, unless otherwise constrained, people "vote with their feet" and will move to a community that meets their perceived needs of services, location and taxes.

Cadwallader (1982) utilized several equations in determining the underlying causes of urban residential mobility between 1950 and 1970 in Portland, Oregon. Income was associated with the percentage of people living in single-family units and housing value. The relationship between income, housing value, and residential mobility was positive. This relationship indicates that as income increases, the housing value increases, and residential mobility increases. The author concludes that more research needs to be conducted on neighborhood change rather than on mobility. Residential mobility is too often viewed as a separate phenomenon rather than as a consequence of neighborhood change. Thus, neighborhood level analysis is important, as well as the individual level behavior.

Boehm et al. (1990) develop a model to analyze household mobility decisions. The authors test the assumption that new residents are more likely to move because of information asymmetries associated with the local housing market. When new residents are considered with mobility, tenure, and migration variables, there is a small but positive effect. This effect indicates that new residents who are renters are far likely to move once they obtain information on the local housing market.

Kasarda et al. (1997) analyze metropolitan household migration patterns between 1980 and 1990 using U.S. Census data to show the prolonged outmigration of residents from central cities to the suburbs. In a study of 12 cities consisting of several regions, Cleveland, Ohio (about 100 miles from Youngstown) had the highest percentage of net outmigration rates in the upper-income segments of the household ownership population. Between 1985 and 1990, 1,561 households in the top 20 percent income bracket moved into Cleveland while 7,353 households in the same bracket moved out of the city, for a net loss of 5,792 upper-income homes. Seventy-six percent of people moving out of Cleveland in the top bracket moved to the suburbs, while slightly less than 5 percent of people moved from the suburbs into the city. This rate of 76 percent of all movers going from the city to the suburbs also includes the top 20-40 percent income bracket and the 40-60 percent income bracket. As income decreases, the move back into the city becomes more likely, with the lowest 20 percent income bracket having 20 percent of movers migrating into the city. The results show that outmigration from the central city increases as a person's income increases. As demonstrated in the later city employee survey, Youngstown City employees have incomes well above the city average.

Quercia and Galster (1997) study the benefits of middle-income households in the central city. Specifically, the authors attempt to establish a threshold where the presence of middle-income households improves fiscal conditions by providing tax base stability

and decreased isolation of low-income households in the central city. By attempting to identify a threshold, the goal is to determine the number of middle-income households in an area needed to create benefits. Fiscal benefits include property taxes, income taxes, state transfers, fiscal benefits from retail establishments, fiscal benefits from improved city image, and the cumulative causation of positive externalities based on a lower overall tax burden per household. Social benefits include the existence of middle-class role models, networking opportunities for employment, and sustaining social institutions such as churches and clubs. Thus, if middle or higher income households leave the city in substantial numbers, the City's fiscal condition is expected to be worse.

Clark and Davies Withers (1999) analyze mobility, focusing on employment rather than life-changing events such as marriage and childbirth. The results of the analysis indicate that employment is connected to residential relocation, especially in the case of single renters. A majority of residents relocate within a two-month interval based on a change in employment. The most notable difference regarding mobility and employment is that singles often move before starting the job while couples move after starting the job.

Strassman (2000) examines mobility and affordability in the United States framed in the context of policy intervention. The idea is that national and local housing policies often create an artificial equilibrium due to changing rents and prices, lowering the number of transactions and mobility. Using the 25 largest U.S. cities, including Cleveland, there is no evidence to support the idea that housing policies have a negative impact on mobility. The most important factor that should be considered, even more than mobility, is the economic base of each particular city. Depending on the economic base, some cities excel while others are held back. More in-migration leads to more development and new neighborhoods. Conversely, out-migration can lead to a decline in attractiveness.

Bier (2001) looks at moving options and their relationship to city centers. As people move further out, the housing stock left behind often decreases in property value and may lead to deterioration, decline, and eventual abandonment. He states that this trend is mostly indicative of slowly declining Midwestern metropolitan areas. The rate of city decline often takes decades, but if the rate of decline were to occur in a year or two, the likelihood of public and political action would be much higher. In summarizing the research, major financial assistance to subsidize the construction of higher-valued properties within central city boundaries or limiting the rate of sprawl are proposed as possible solutions. Thus, factors that accelerate out-migration can also be expected to eventually lead to more housing abandonment, through the housing filtering process.

Marsh and Kay (2006) summarize the results of residential mobility in the literature as occurring over short distances, within metropolitan areas, with renters being more mobile than owners because of lower transaction costs and their smaller investment in the neighborhood. Younger people are more mobile than older people. Mobility is tied to life-changing events, reflected mainly in Rossi and later authors, which usually occurs before the age of 35. These life-changing events include marriage, children, and employment.

Supply and Demand for Housing

One methodological issue that is central to this report is the effect of additional unsold houses (housing listings) on the sales price of housing in the market. In this regard, Blair (1995) discusses housing supply and demand as creating an equilibrium that is subject to the level of uncertainty associated with attempting to reach a perfect equilibrium. Demand factors that can influence housing prices include the price of other goods such as electricity and natural gas, consumer preferences, size of the market based on population trends, incomes, and expectations such as the interrelationship between inflation and housing prices. Changes in any of these factors or supply factors can change supply and/or demand. If income increases, then the demand for better housing will increase, leading to increases in the supply of better housing. If incomes decrease, then the opposite is expected to occur.

DiPasquale and Wheaton (1996) establish several underlying determinants of housing markets that affect supply and demand. Housing consumption increases as a person becomes older and their income increases. In regards to income, housing demand is inelastic and around 0.8. The main reason people move is to improve their current housing situation by moving to a better home. A secondary reason is that people move based on their job. Obviously, renters move more often since the transaction costs to move are far less than those of homeowners. In looking more closely at the impact of supply and demand, the underlying factors of vacancy and sales time come into play. Higher vacancy rates mean a wider variety of homes on the market, providing buyers with a greater likelihood of finding their desired home. High vacancy rates also mean that the amount of time between putting a house on the market and its actual sale increases. This increased time on the market often forces sellers to lower the sales price in order to sell a house or risk losing further money by keeping the vacant house on the market. Additionally, as sales time increases for homes on the market, the rate of new construction decreases due to the lack of demand and the existence of excess supply. We expect these forces to be in play in the Youngstown residency case.

Downs (1997) discusses several causes of out-migration from central cities to suburbs since 1940 that affect housing supply and demand. Among these causes include a rise in incomes from 1950 to 1973, with rising incomes for middle- and upper-income households since 1973. This increase in income for all but the lower class enabled an exodus of the other classes out of central cities to suburbs where they could buy newer, larger homes. The growing traffic burden and resulting congestion led many firms to move to the suburbs. This movement in turn led to employees following firms out to the suburbs to reduce commuting times. Housing supply and demand increased in the suburbs while stagnating in central cities.

Goodman (2005) develops causal theories regarding housing supply and demand in the 1970s, 1980s, and 1990s in suburbs and central cities. In analyzing major metropolitan areas over the 30-year period, the data show a loss in both population and housing units for central cities, a loss of population in inner-ring suburbs, decreasing household sizes that were not offset by an increase in units, and outer-ring suburbs that increased population and had large numbers of new units built. The supply of housing units is related to the value of the housing stock, factor costs, and labor market unionization. The demand is related to the price of the housing, per capita income, and metropolitan population. The study revealed a mean elasticity for the Midwest region

over the 30-year period of 1.01 with an elasticity in the 1990s of 0.3725. This inelasticity in the 1990s indicates that quantity demanded reacted very little to price changes. While suburbs had higher elasticities, the relatively inelastic measures in the older central cities of the Midwest and Northeast stagnated the overall measures.

Non-Peer-Reviewed Studies on Residency Laws Effects

The City of Detroit commissioned a study by the Anderson Economic Group on the economic and financial impact of removing their municipal residency requirement in 2000. In citing an earlier study by Michael Thompson commissioned around 1985, a survey conducted in the 1970s indicated that 57 percent of police and 62 percent of fire personnel would move if the municipal residency requirement was removed. Thompson used a conservative estimate that 34 percent of employees would migrate without the law. The study in 2000 discovered that 46 percent of city employees live within a half a mile of the Detroit municipal boundary and 63 percent live within a mile of the city limits. Additionally, 14 to 29 percent of all non-governmental workers left Detroit between 1985 and 1990.

The logic established in the report is solid, but fails to include any of the peer-reviewed literature to solidify the methodology. The logical premise is that city employees are a segment of the middle class. With the termination of municipal residency requirements, a percentage of this middle class will leave the city. Once the middle class leaves a neighborhood, this movement causes other middle class households to leave the neighborhood. When a middle class household moves out of a neighborhood, their income obviously follows. With enough out-migration, housing becomes devalued and neighborhood disinvestment occurs, leading to delinquent tax properties and abandonment. Additionally, living near fire or police personnel often instills a sense of safety, and the movement of these safety personnel out of neighborhoods is often perceived as decreasing the general safety in the neighborhood.

Using a multiplier effect of 1.25, the study assumes that for every four city-worker households that leave the city, one additional household will also migrate out of the city. Essentially, the multiplier uses the number of city-worker households likely to migrate to project the number of likely additional households to migrate out of the city. The multiplier is fairly conservative in the Detroit report. Four scenarios were used to show the impact of migration, ranging from a high of 35 percent of all employees migrating to a low of 23 percent. Projecting losses over a four-year period between 2000 and 2003, the total cumulative losses in terms of taxes to the City of Detroit was approximately \$50 million.

As a final item, a newspaper article in the *Toledo Blade* pertained to the City of Toledo, Ohio. It stated that roughly 60 percent of all public school teachers lived outside the Toledo School District (Svoboda 2003).

SURVEY RESULTS

Methodology

In order to determine the number and extent of City of Youngstown employees that would move if the residency requirement were lifted, we organized a survey of City employees for this case. A professional survey firm called Field House Market Research from Overland Park, Kansas conducted the telephone surveys under my direction. The calls were made from a list of City employees obtained from the City of Youngstown Civil Service (Personnel) Department. The survey firm called names at random, until they reached a City employee who would participate in our brief 5-10 minute survey.

The sample frame was the 589 City of Youngstown employees on the list provided by the City, which we were informed included all employees subject to the residency requirement (i.e., not "grandfathered") as of November 2006. Telephone numbers for 131 of these employees were found to be no longer valid, blocked, or on the "no call" list. From the remaining 458 numbers, we obtained a total of 71 completed interviews (including 5 respondents who formed a "pretest" pool which confirmed that the instrument was working properly). This represents response rates of 15% net (based on answered calls, including answering machines) and 12% gross (based on attempted calls to all telephone numbers). However, 2 of the 71 respondents (including 1 respondent from the pretests) stated that they lived outside the Youngstown city limits. Accordingly, we excluded these two respondents from the analysis of the survey results. We were thus left with a pool of 69 completed interviews for analysis; this number of responses generates statistically significant results that exceed a 90% level of confidence with an error band of 9%. The survey instrument is included as Exhibit 3.

The survey approach is similar in many important aspects to contingent valuation research in the real estate field. Although it does not ask about values of housing (the traditional focus of contingent valuation), it does inquire about housing choices and relocation behavior. Thus, the methodology for conducting the survey, control procedures, sampling and related issues has been peer-reviewed. For example, the instrument is quite detailed, avoids key pitfalls described in Mundy and McLean's contingent valuation articles in The Appraisal Journal and Journal of Real Estate Practice and Education (1998), and is an identical methodology to that used in peer-reviewed literature (Simons 2002; Simons and Winson-Geideman 2005, Simons and Throupe 2005). The instrument also does not specifically guide the respondent to the municipal residency controversy, but "nests" the issue in a broader context.

Representation

The characteristics of the interview sample reflect the profile of Youngstown City employees subject to the residency requirement very closely on key factors such as tenure (differences within nine percentage points for all 3-year service cohorts and within two percentage points for all 6-year service cohorts) and employment status (94% full-time for the survey respondents and 92% for City employees).

The City's Civil Service Department provided us with a list of residence ZIP Codes for all employees, but the list could not be subdivided to isolate those employees subject to the residency requirement. As outlined in Table 1 (to the right), in general the geographic distribution of survey respondents by ZIP Code of residence provides a close match with that of the City employees as a whole. The survey somewhat over-represents two west side and south side ZIP Codes (44511 and 44512) while slightly under-representing ZIPs (44502, 44504 and 44505) on the south, north and east sides, respectively.

Demographic information on income levels between the interview sample and the City employees as a whole is not readily comparable. The survey asked for an estimate of respondents' recent household income, but the City's Civil Service Department provided data for individual income ranges only. Due to the presence of multiple-earner households among the survey respondents (an average of 1.6 full-time employees per household), the sample's reported household income levels substantially exceed the City employees' individual income levels. However, after adjusting the City employees' income data to estimate the impact of additional wage-earners within the households (using the 2005 average annual income for the Youngstown-Warren metropolitan statistical area of \$30,350 obtained from the Bureau of Labor Statistics), the survey respondents proved to represent well the assumed income distribution of City employees' households, with differences of less than 5 percentage points for all income brackets. Here, too, the Civil Service Department data did not permit subdivision to identify income information for those employees subject to the residency requirement.

Table 1: ZIP Code of Residence

<u>ZIP</u>	<u>City</u>	
	<u>Employees</u>	<u>Survey</u>
44501	0.2%	1.4%
44502	8.1%	2.9%
44504	8.1%	2.9%
44505	7.4%	1.4%
44506	2.4%	1.4%
44507	4.3%	1.4%
44509	17.9%	18.8%
44510	1.0%	1.4%
44511	38.3%	47.8%
44512	7.2%	13.0%
44514	4.6%	5.8%
44515	0.5%	0.0%

The interview sample's "fit" with the departmental distribution of City employees is shown on Table 2. Our survey appears to have over-represented law department employees and slightly over-represented parks and health department employees, while under-representing police and public works employees. The other City departments were appropriately represented by the survey response. The relatively small numbers involved account for some of the variation from the overall City employee departmental distribution.

Summary of Responses

Important locational factors. The survey began by asking respondents to estimate the importance of several factors that might impinge on their potential decision to relocate, using a scale ranging from -3 (important negative factor) through 0 (neutral factor) to +3 (important positive factor). Overall, the strongest positive factors (with average ratings between 2.0 and 2.7) involved in such a decision were revealed to be quality of the home, quality of the public schools, and presence of natural beauty or views. Property taxes and convenient neighborhood shopping emerged as moderately strong positive factors (average ratings from 1.1 to 1.4). Overall, a city residency requirement was seen as essentially a neutral factor (but leaning toward the negative side), with an average rating of -0.1. The presence of environmental problems for the property was the only choice rated as a strong negative factor (-2.6).

When asked to identify the most important of the various factors, quality of the house was identified most often (32%), with quality of the schools the second-greatest consideration (25%) and a residency requirement the clear third choice (17%). When the analysis is expanded to include all mentions within the respondents' choices of first, second, or third most important factors, quality of the house and quality of the public schools remain the most compelling factors (noted by 70% and 60% of respondents, respectively). A residency requirement, property taxes, presence of environmental problems, and the "other" category form a second-tier group mentioned by 32% to 36% of respondents. Based on the interviewees' responses to these questions, about one-third of Youngstown municipal employees subject to the City's residency requirement consider that requirement to be an important home location factor; for half of these it would be the most important factor.

**Table 2:
Employee Departmental Distribution¹**

<u>Department</u>	<u>City Empl's</u>	<u>Survey</u>
Finance	3.6%	1.9%
Fire	12.8%	13.2%
Health	4.4%	9.4%
Law	2.0%	11.3%
Mayor/Council	2.0%	1.9%
Municipal Court	8.5%	5.7%
Parks	8.5%	13.2%
Planning/Comm. Devel.	2.4%	5.7%
Police	25.8%	17.0%
Public Works	19.3%	1.9%
Water	10.6%	11.3%
Other	0.0%	5.9%

¹ Percentages exclude 15 respondents who described themselves as "Civil Service" employees. According to the employee list provided by the City of Youngstown, its Civil Service Department (which serves the human resource/personnel function) contains only four employees. Thus, at least 11 of these 15 respondents actually work in some other City department(s). With a valid sample of 53 respondents to this question spread across 11 City departments, the survey percentages reflected in Table 2 are sensitive.

Home ownership. Based on the survey respondents, home ownership rates among City of Youngstown employees are quite high, at approximately 89%. This finding may reflect the relative affordability of housing in Youngstown and the comparatively high household incomes of City employees.

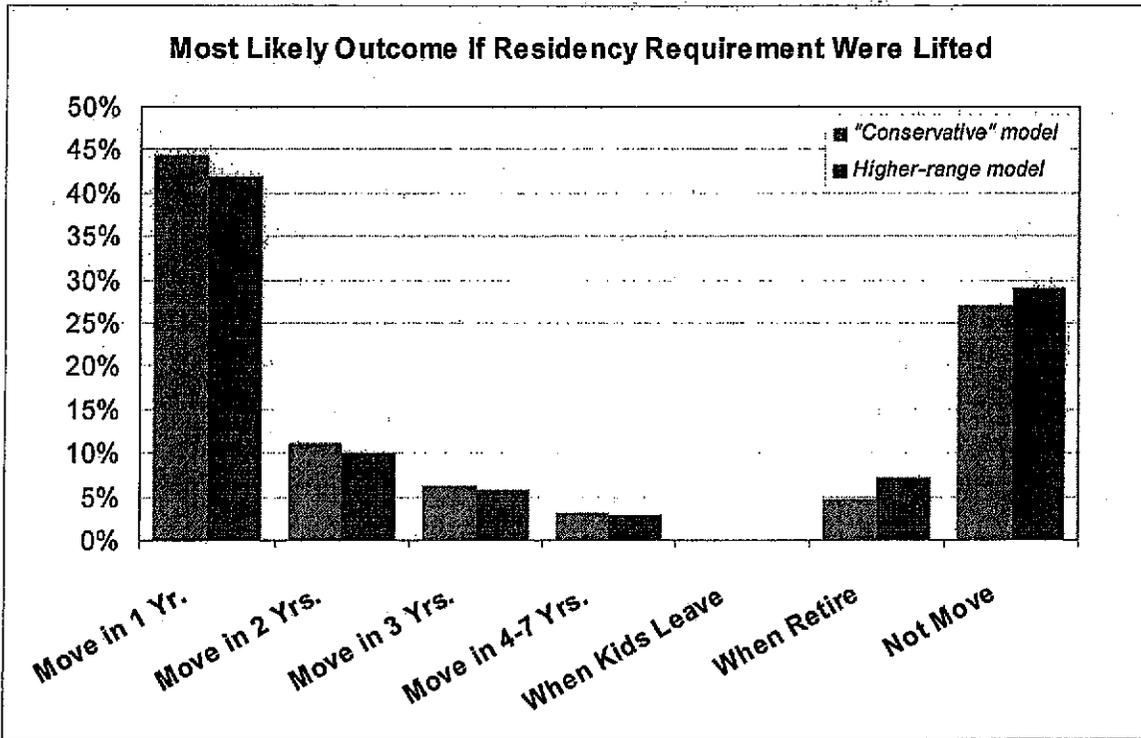
Importance of residency requirement in current neighborhood selection. Fifty-nine percent (59%) of respondents considered the City's residency requirement to be very important to the choice of their current neighborhood, and another 15% identified the requirement as somewhat important. When asked the follow-up question, "If there was not a City residency requirement at the time you accepted your job, would you have chosen to live in a home outside the city where you now live?", 67% answered "Yes" and another 4% allowed that they might have chosen to do so. Thus, over two-thirds of the respondents would or might now be living outside Youngstown had the residency requirement not been in force when they were hired. Responses to both of these questions were slightly stronger among residents of the six ZIP Codes in the "conservative" study area.

These responses are important, because they guide assumptions regarding the likely residence choices of newly-hired future City employees, should Youngstown's residence requirement be removed. That is, it appears from the responses to these questions that in the absence of the City's residence requirement, at least two-thirds of future new hires would choose to live outside Youngstown. As a result, because of the relatively higher income of City employees, demand for housing could be dramatically reduced in some of the City's higher socioeconomic neighborhoods, should the residency requirement be rescinded.

Likely outcomes if residency requirement were removed. Overall, only 29% of the respondents stated that they would not move if the City's residency requirement were rescinded. Approximately 42% stated that they would move within one year of the requirement's lifting, another 10% in the second year, 5% in the third year, and a total of 3% over the fourth through seventh years. The pattern appears even a bit stronger in the six ZIP Codes comprising the "conservative" study area, where 45% of respondents indicate they would move during the first year after rescission of the residency requirement, with 65% leaving within the first seven years.

The Youngstown survey results were consistent with similar studies conducted in Cleveland and Akron during 2006. All three surveys found that a majority of city employees would leave their respective communities if the residency requirement were lifted. The methodology used was very similar.

Figure A



Conclusions from City Employee Survey

If the City's residency requirement were lifted, about 60% of City employees would move out of Youngstown within the relatively near future: 42% in the first year, 10% in the second year, 5% in the third year, and 3% total during the fourth through seventh years following removal of the residency requirement. Furthermore, at least two-thirds (67%) of City employees hired in future years would be expected to live in other jurisdictions rather than to remain in (or move into) Youngstown.

HOUSING MARKET ANALYSIS

This section sets forth the methodology used to estimate the effect of the lifting of employee residency requirements on the City of Youngstown housing markets. The first section covers the City employees that are eligible if residency is altered. We reintroduce, from the survey results and other sources, the number that are likely to move outside the City if residency were rescinded. Next, multiple listing service (MLS) data are introduced. These are used to determine the past relationship between the number of houses on the market and sales price of existing homes that sold. A multivariate regression model is built and used to provide a marginal propensity coefficient of the effect of an additional listing on sales price of other houses. The result is that each additional housing listing subtracts an average of \$42.32 from the sales price of other houses on the market. Because of the way real estate appraisals are conducted, these marginal sales will eventually influence the sales price of all houses in these submarkets; the reduction in sales prices will also work its way into the tax base. We then extrapolate this finding to the City as a whole, and we project the reduction in sales price.

City Employees and Their Current Locations

City of Youngstown representatives provided us with a summary of City employees as of November 2006, indicating a then-current staffing level of 589 persons (including full-time, part-time and seasonal employees). Review of mailing data revealed that 10 City employees live in jurisdictions other than Youngstown. Five of these 10 employees were hired during 2006; one was hired in 2005, one in 2003, and three prior to 1994. Review of employee hiring dates indicates that no current employees were hired before the municipal residency law took effect in 1967. After allowing for the 10 employees who currently live outside Youngstown, we estimate that there are, conservatively, 579 City of Youngstown employees currently subject to the residency requirement.

With respect to their current residential location, the 589 employee addresses provided to RS&A by the City of Cleveland were geocoded using a geographic information system (GIS). Geocoding enables an address to be matched to a database of street addresses for eventual plotting on a map. Once the geocoding process was complete, 575 of the 589 addresses (97%) were successfully matched. The matched addresses were then plotted on a Mahoning County street grid to determine which cities the employees lived in.

The next step was to determine which Youngstown neighborhoods were most popular with the City employees for whom we had data. We compared a neighborhood overlay theme, based on MLS area boundaries, with a listing of residence ZIP Codes for all City employees. This analysis disclosed that about 80% of all City employees residing in Youngstown live in six ZIP Codes (44502, 44507, 44509, 44511, 44512 and 44514) wholly or partly contained within MLS Areas 3 and 4, on the western and southern sides of the city.

Who Would Move Out, and How Fast?

The survey results prepared for this case indicate that 60% of City employees would move out of Youngstown before their retirement if residency requirements were not in place. This figure is consistent with actual experience from several other sources, including information from the Toledo Public Schools and the Cleveland Municipal School District.

The *Toledo Blade*, in an article on a Toledo Public Schools tax levy in 2003, stated that nearly 60% of all public school teachers lived outside of the school district's boundary. The impact of this statistic demonstrates that for a school tax levy in Toledo, only 40% of the teachers can vote for the levy. If a levy passes, the people within the city pay higher taxes to support the wages of employees who do not pay property taxes because those employees live outside the city. The data cited in the *Toledo Blade* article only looked at teachers, and not all school employees.

Using data obtained from the Employee Services Department in the Cleveland Municipal School District, a comparison of all employees was conducted based on the employee's city of residence. This comparison used the 2005-2006 city of residence of all employees (teachers and administrative staff) within the Cleveland Municipal School District. An analysis of the data determined that only 42% of employees lived within Cleveland. Of the district's nearly 9,000 employees, this percentage translates to approximately 5,200 school employees who live outside the city. Given the choice of

living within Cleveland versus living outside of Cleveland without any municipal residency requirement, 58% of school district employees choose to live outside the city limits.

Thus, our survey results, indicating that 60% of City employees would move away from Youngstown if the residency requirement were rescinded, appear to adequately reflect the likely exodus rate — and may even understate it. Indeed, 65% of our survey respondents living in the two popular MLS submarkets stated that they would move out of the City within seven years if permitted to, and 67% of *all* survey respondents stated that had there been no residency requirement at the time they were hired, they would not have chosen to live in Youngstown (and another 4% suspect that they might not have).

The next issue is, how quickly would these municipal employees leave, once the City's residency requirement were lifted? Our survey results show that, overall, 42% of those City employees stated they would leave within the first year, with 10% anticipating a move during the second year, 5% during the third year, and 3% within four to seven years.

Methodology for Determining Relationship Between Sales Price and Additional Housing Listings: Model and Relevant Data

We examined the single-family housing market in Youngstown using sales price data for the years 1992 through September of 2006. The sales price and the number of homes listed for sale variables were obtained from the Northern Ohio Regional Multiple Listing Service, which divides Youngstown into four MLS market areas.

The literature review revealed several factors that affect housing values based on economic and neighborhood change. While several variables were considered in our single-family housing model, the dependent variable was the closing sales price. The independent variables included the total number of all homes listed, metropolitan per capita income, median contract rent, percent vacancies, and the number of homes demolished. The metropolitan per capita income, median contract rent, and vacancy percentage variables were derived from 2000 U.S. Census data; home demolition data was provided by the City of Youngstown's Department of Community Development.

A total of three models were run and used in this analysis. The set of three models included one model using all four MLS areas and two models exclusive to the two neighborhoods with the largest number of transactions for model stability.

Some of the observations (each geographic submarket, single family sales, for each year) had very few sales or proved to be statistical outliers. Once outliers were removed from the model via scatterplots, descriptive statistics were run on the remaining available observations. The purpose of removing outliers is to ensure regression model validity by not including extremely high or extremely low observations that may unduly influence the model. Table 3 contains the descriptive statistics for the model without outliers.

Table 3: Descriptive Statistics for Housing Market Without Outliers

	<u>N</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Mean</u>	<u>Standard Deviation</u>
Home sales closed:					
Number	56	2	358	152.71	111.92
Original list price	56	\$19,195	\$62,745	\$39,883	\$11,958
Closing sales price	56	\$16,284	\$59,070	\$37,166	\$11,479
Ratio of sales price to list price	55	0.83	0.96	0.92	0.03
Closed average days on market	56	61	245	132.91	36.66
Expired listings:					
Number	60	2	321	95.12	93.25
Original list price	60	\$16,400	\$71,231	\$39,977	\$13,390
Total homes listed:					
Number	56	10	633	253.95	192.48
Median contract rent	60	\$ 242	\$ 373	\$308.25	\$ 47.02
Percent vacant	60	0.06	0.22	0.14	0.06
Metropolitan per capita income	60	\$17,526	\$28,669	\$23,479	\$ 3,131
Housing demolitions	44	4.37	147.81	60.07	38.97

* All data come from the Northern Ohio Regional Multiple Listing Service except the percent of vacant homes, median contract rent, and metropolitan per capita income (which are derived from the 2000 U.S. Census) and number of housing demolitions (which were provided by the City of Youngstown Department of Community Development).

“Home sales closed” is the number of homes sold in a given MLS market area in a specific year. The average number of sales was 153 per year, at an average price of \$37,200. The ratio of sales price to list price is the percentage of the closing sales price compared to the original list price. The mean of 0.92 indicates that, on average, homes closed at a price that was 8% less than the original list price. The “closed average days on market” is defined as the average number of days a home was listed before the sale closed. The data indicate that a home was on the market an average of more than four months (133 days) before the final closing. The average of 95 expired listings means that 95 homes in the typical Youngstown MLS submarket were listed for a certain amount of time in any given year, before being taken off the market without selling.

The average number of total homes in a submarket listed for any given year is 254. Using the averages for total number of sales closed and total number of expired listings, approximately 62% of all homes sold and 38% of listings expired. These figures mean that if 10 homes are put on the market for sale, six of them will sell at a discount of 8% after spending slightly more than four months on the market. The other four homes are put on the market, and are eventually taken off of the market. Once a listing is taken off of the market, the possibility exists that the home will be put back on the market at a future time, the owner will rent the house instead of attempting to sell it, the owner may abandon the property altogether, or the home may be demolished.

Recent trends indicate the national housing market is rapidly softening (*Plain Dealer*, September 26, 2006). Youngstown is sharing in this decrease, and average sales prices revealed in the local MLS data show substantial decreases (averaging 8% to 9%) from 2005 to 2006. An excess number of unsold listings, such as may be generated by

lifting of the residency requirement, can be expected to have a lingering effect on housing sales price.

Regression Analysis Results

Three regression models are presented. The set includes one model with all four MLS submarkets and two models (one using two independent variables and the other using three) exclusive to the two submarkets with the largest number of transactions for model stability. In each model, the dependent variable was the closing sales price. The independent variables included the total number of all homes listed (including those sold), metropolitan per capita income, number of homes demolished (for the three-variable, two-submarket model), and median contract rent (for the four-variable, four-submarket model). Summary results are included in Table 4 for the model that had the highest explanatory power (two submarkets, three variables). With closing sales price as the dependent variable in this model, the independent variables explained 78% of the variance in sales price, using the standard adjusted R-squared measure. The F-value of 25.9 indicates that the model was significant at well over a 95% level of confidence.

The data regarding sales price were tested for multicollinearity between the independent variables, and the regression results reported no multicollinearity problems. To test for outliers and heteroscedasticity, scatterplots were run on residuals of the variables. No fanning or cone-shaped pattern appeared. As indicated above, the scatterplots also revealed outliers that were removed from the model prior to presentation of the model results presented in Table 4. A negative B-value indicates that as the independent variable increases, the sales price decreases because it is inversely related to the independent variable (and vice versa). In the two-submarket, three-variable model, all three independent variables showed this inverse relationship with sales price. This result is expected by theory for total number of homes listed and for number of demolitions. The B value for the other independent variable (metropolitan per-capita income) does not show the relationship predicted by theory, but this result was not statistically significant. In contrast, the other two independent variables are statistically significant at a 95% level of confidence or better. These results represent the relationship that with each additional home listed on the market, or with each additional home demolished, there is a decrease in price for all homes sold in that market.

Table 4: Model Results – Impact on Closing Sales Price

<u>Independent Variable</u>	<u>B-Value</u>	<u>Significance</u>
Total number of homes listed	-42.32	0.017
Metropolitan per-capita income	-0.214	0.682
Demolitions	-186.46	0.001

For instance, using the B-value (-42.32) in the model, one more home listing on the existing market would devalue each other closing sale prices by \$42.32. If there are currently 300 homes being listed with an average sale price of \$40,000, the reduction in each one's sales price from one additional home placed on the market is \$42.32. If 100 *new* listings entered the market, holding all else constant, the reduction in expected sales

price for each of those homes — and for all other homes currently on the market at the time the new listings appeared — would be \$4,232 per home. The effect of an additional listing on sales price is the main finding from the housing market sales analysis, and is carried forward to the economic analysis below.

Applying the Results

Conservative model. Table 5 summarizes the likely outflow of current municipal employees and the impact on housing sale prices if the municipal residency law is lifted, under a conservative set of assumptions. This model assumes that the only neighborhoods from which City employees would move, upon rescission of the residency requirement, are the two “popular” MLS submarkets on the west and south sides of Youngstown, in which approximately 80% of City employees live. It also assumes the out-migration of City employees from these neighborhoods would have no “multiplier” or “ripple” effect on other City residents. Both of these assumptions are almost certain to understate the true loss of residents following any lifting of the City’s residency requirement. The model also ignores any potential impact on housing values caused by renters who take advantage of the opportunity to live outside Youngstown while still working for the City, although this effect will be somewhat mitigated by the relatively small percentage of City employees who rent. Finally we ignore any effects that future City employees not required to live in the City would have on the housing market.

For the analysis, the sales price in year 1 is the weighted average sales price from the MLS sales data for the five neighborhoods in 2005 (the last full year for which data was available), and the discount per additional listing comes from the average B-value from the regression model. For both the discount per additional listing and the sales price, a conservative annual appreciation rate of 3% was used and held constant. This assumes that the housing market in Youngstown will remain relatively steady with the rate of inflation.

In Table 5, the number of municipal employees considered “eligible” to move from the City is 80% of the 579 employees currently subject to the residency restriction, or 463. Our survey of current municipal employees found that 65% of municipal employees living in the western and southern submarkets would move out of Youngstown within seven years (conservative estimate, excluding those who would move once their children have grown) if the City’s residency requirement were rescinded. Responses to a follow-up question indicated that 45% of employees would move out within the first year, 11% would move out in the second year, 6% would move out in the third year, and 3% would move out during the course of years 4 through 7. Using this projected out-migration rate, 208 current employees would likely want to move out of Youngstown in year 1 if no municipal residency law existed. Based on the 89% home ownership rate from our survey, 180 additional homes would be added to the existing for-sale housing market in the first year. If each additional home on the market results in a decrease in price of \$42.32 per home, the average discount for each home on the market in the first year would be \$7,615; this translates into a discount of 17.7% (from the weighted-average 2005 single-family closing sales price of \$43,100 for the MLS data for the western and southern submarkets). Based on an eight-year average of home sales data from the MLS study, we assume that 65% of these new listings would sell in the first year, and the rest would remain on the market into the second year before selling. The

average home selling price discount, resulting from the projected exodus of City employees, in the two MLS submarkets is approximately 11% for the first three years without a residency requirement and 3.9% over the first decade.

The analysis under this conservative model excludes any impact on housing sales prices resulting from future new City employees who would live in the two MLS submarket neighborhoods under the City's current laws but would choose to live outside Youngstown in the absence of a residency requirement. We estimate these future new hires to represent a "demand loss" of 21 for-sale homes per year in the two submarkets, which is not modeled in the analysis. Economic theory would predict that a reduction in demand for homes would lead to lower sales prices, longer on-market selling times, or both. Thus, the actual reduction in home sales prices (value) in the two MLS submarkets, upon rescission of the City's residency requirement, is likely to be greater than projected by this conservative model.

Table 5: Annual Impact on Housing Values – Conservative Model

Year	Empl's Leaving City	Additional Homes for Sale*	Average Sale Price with Residency	Cost per Additional Listing	Reduction in Average Price per House	Average Sale Price Without Residency	Percent Reduction in Average Sale Price	Average Reduction for X-Year Period
1	208	180	\$ 43,100	\$ 42.32	\$ 7,615	\$ 35,485	17.7%	17.7%
2	51	107	\$ 44,393	\$ 43.59	\$ 4,663	\$ 39,730	10.5%	14.1%
3	28	61	\$ 45,725	\$ 44.90	\$ 2,758	\$ 42,967	6.0%	11.4%
4	5	25	\$ 47,097	\$ 46.24	\$ 1,179	\$ 45,917	2.5%	9.2%
5	5	13	\$ 48,509	\$ 47.63	\$ 616	\$ 47,894	1.3%	7.6%
6	5	9	\$ 49,965	\$ 49.06	\$ 418	\$ 49,547	0.8%	6.5%
7	0	3	\$ 51,464	\$ 50.53	\$ 151	\$ 51,313	0.3%	5.6%
8	0	1	\$ 53,008	\$ 52.05	\$ 54	\$ 52,953	0.1%	4.9%
9	0	0	\$ 54,598	\$ 53.61	\$ 20	\$ 54,578	0.0%	4.4%
10	0	0	\$ 56,236	\$ 55.22	\$ 7	\$ 56,229	0.0%	3.9%

ASSUMPTIONS:

Conservative Model: Out-migration from two MLS submarkets (west and south) only; no multiplier effect; no effect from future years' new hires

Employees under residency law: 579 (City of Youngstown, Civil Service Department)

City employees living in two MLS submarkets: 80% (RSA analysis of employee residence ZIP Codes, and address plots, from City's Civil Service Department)

Households per City employee: 0.97 (RSA analysis of 589 employee home addresses provided by City's Civil Service Department)

Market appreciation trend: 3% per year

Home ownership rate: 89% (RSA survey of 69 City employees)

New listings sold each year: 65% (average from Youngstown MLS sales data, 1998-2005)

Rental properties: Replace City-employee tenants who move, without entering the housing sales market

City of Youngstown employment: Static throughout the projection period

*Includes new listings plus unsold 35% of prior year listings

Higher-range model. As an alternative to the projections developed in Table 5, we developed a second model (summarized in Table 6) with three additional assumptions not used in the conservative approach. First, we assumed that if the residency restriction were lifted, employees living in all Youngstown neighborhoods (not merely the two most popular MLS submarkets used in our conservative model) would move out of the City, and that the marginal effects of an additional listing would be the same city-wide as it was for the two MLS submarkets with high concentrations of City employees. Second, we assumed a lost-household “multiplier factor” of 1.25, reflecting the likely additional reduction in retail and service employment households within Youngstown (one additional household for every four municipal employee households who leave) as the municipal employees move out. Third, we assumed that the housing market impact of future new hires no longer required to live in Youngstown is equivalent to that of current employees who move out of the City upon lifting of the residency requirement. (Our data indicates that 67% of these future new employees would live outside Youngstown in the absence of a residency requirement. Some would have been living in Youngstown at the time of their hiring, but would move to another jurisdiction because their new salaries enabled them to afford to move, or to improve their children’s educational opportunities. Others would have lived outside Youngstown at their hire date and would continue to do so. These new hires represent a “demand loss” for housing in Youngstown, and the higher-range model assumes that the effect of each additional household not moving into Youngstown is equivalent to that of each household moving out of the City, i.e., the same as an additional listing.)

Our employee survey suggests that, city-wide, Youngstown municipal employees would move out of the City at a slightly slower rate than under the “conservative,” tow-submarket scenario presented above. Thus, the higher-range model uses exodus rates of 42% in the first year after rescission of the residency law, 10% in the second year, 5% in the third year, and 1% in each of the subsequent three years. Under the higher-range scenario, the equivalent of 227 homes would be added to the existing for-sale housing market in the first year after the municipal residency law is lifted. These additional on-market homes translate into an average discount per existing listing of \$9,619 (from the 2005 city-wide average single-family home sales price of \$41,500) or 23.2%. The discount decreases over time as the annual out-migration of current City employees slows, reaching a “steady-state” level of about 3% after ten years (attributable to the impact of the loss of the 67% of annual new hires who would no longer live in Youngstown). The average sales price discount is approximately 15% over the first four years without a residency requirement, 10% over the first eight such years, and 8.5% over the first decade.

Table 6: Annual Impact on Housing Values – Higher-Range Model

Year	Empl's Leaving City or not Moving In	Additional Homes for Sale*	Average Sale Price with Residency	Cost per Additional Listing	Reduction in Average Price per House	Average Sale Price Without Residency	Percent Reduction in Average Sale Price	Average Reduction for X-Year Period
1	263	227	\$ 41,500	\$ 42.32	\$ 9,619	\$ 31,881	23.2%	23.2%
2	78	147	\$ 42,745	\$ 43.59	\$ 6,403	\$ 36,342	15.0%	19.1%
3	49	135	\$ 44,027	\$ 44.90	\$ 6,044	\$ 37,983	13.7%	17.3%
4	26	82	\$ 45,348	\$ 46.24	\$ 3,772	\$ 41,576	8.3%	15.1%
5	26	59	\$ 46,709	\$ 47.63	\$ 2,787	\$ 43,922	6.0%	13.2%
6	26	47	\$ 48,110	\$ 49.06	\$ 2,298	\$ 45,811	4.8%	11.8%
7	0	38	\$ 49,553	\$ 50.53	\$ 1,908	\$ 47,645	3.9%	10.7%
8	0	35	\$ 51,040	\$ 52.05	\$ 1,800	\$ 49,239	3.5%	9.8%
9	0	33	\$ 52,571	\$ 53.61	\$ 1,746	\$ 50,824	3.3%	9.1%
10	0	32	\$ 54,148	\$ 55.22	\$ 1,760	\$ 52,388	3.3%	8.5%

ASSUMPTIONS:**Higher-Range Model:**

Out-migration from entire City, with multiplier effect; housing market demand loss from future years' new hires treated as equivalent to employee moving out of City

Employees under residency law:

579 (City of Youngstown, Civil Service Department)

Households per City employee:

0.97 (RSA analysis of 589 employee home addresses provided by City's Civil Service Department)

Multiplier ratio, per City employee household:

1.25 (Anderson Economic Group study for City of Detroit, conservative estimate)

Lag time on out-migration of multiplier households:

2 years (estimate)

Market appreciation trend:

3% per year (estimate)

Home ownership rates:

89% for City employees (RSA survey)
64% for multiplier households (U.S. Census 2000 data)

New listings sold each year:

65% (average from Youngstown MLS sales data, 1998-2005)

Rental properties:

Replace tenants who move, without entering housing sales market

City of Youngstown employment:

Static throughout the projection period (with 30 new hires per year)

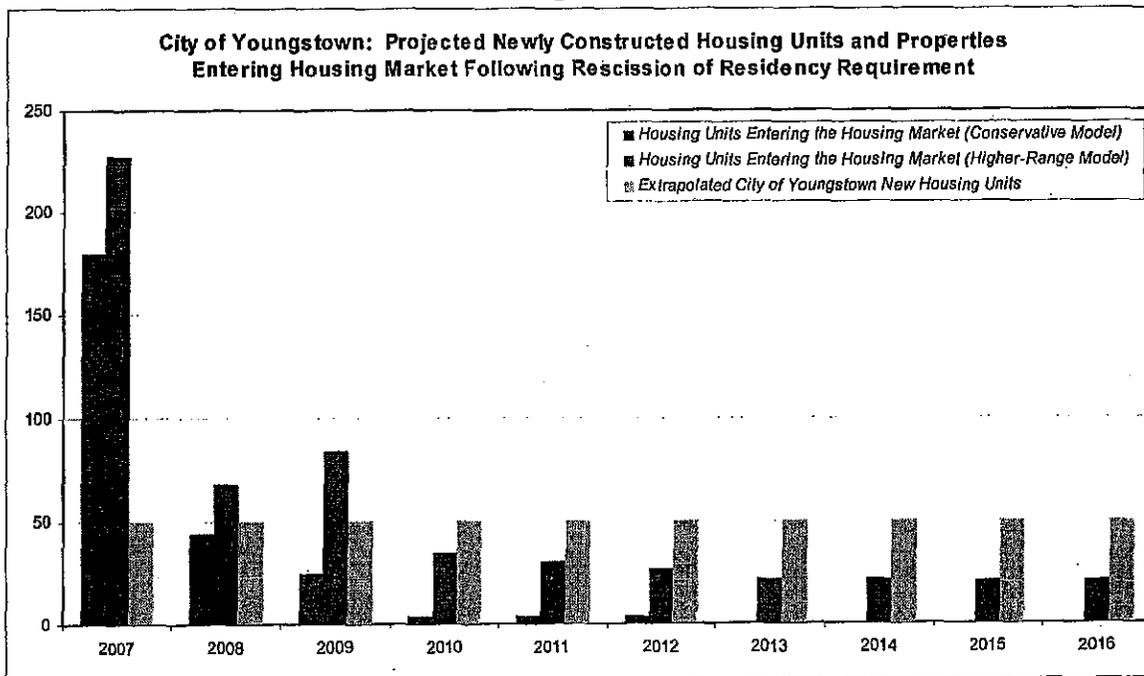
* New listings plus unsold 65% of prior year listings, including "multiplier" households moving out

Impact on New Housing Construction

As developed in the preceding section, I estimate that the lifting of the City of Youngstown's employee residency law would lead substantial numbers of City employees to put their homes on the market and move out of Youngstown within a very few years. Our survey data and housing market analysis project that an additional 248 (conservative model) to 378 homes (higher-range model) would be put up for sale by homeowners attempting to leave the City of Youngstown within three years of the residency requirement's rescission, with 60% to 70% of that total being listed for sale during the first year.

U.S. Census-based building permit data obtained from the Northern Ohio Data Information Service (NODIS) at Cleveland State University indicate that despite a declining population, new housing starts within Youngstown from 1996 through 2005 fluctuated around an average level of about 50 units per year. (It is worth noting, however, that the number of housing starts in 2005 and 2006 dropped considerably, to 9 and 22, respectively.) Thus, removing the City's residency requirement presents the likelihood of providing a first-year influx to the housing market equivalent to at least three to five years' worth of new housing starts at the decadal average rate (and more than 10 years' worth at the most recent two-year pattern). Given the expected out-migration of City employees and recent housing construction patterns, it would be at least five to ten years before the excess supply of housing could be absorbed and the City could anticipate a return to its customary new construction levels. Thus, rescinding the municipal residency requirement would have a substantial negative effect on the new housing market, especially the market-rate sector.

Figure B



A substantial reduction in new housing starts would almost certainly translate into layoffs and job losses in the construction industry in the City of Youngstown, with

resultant decreases in income tax revenue for the City. I do not quantify these items, but I recognize them as an additional loss to the City should the residency requirement be rescinded.

Impact on City Population and Personal Income Trends

Population levels. We also projected the potential effect which removing the residency requirement would have on the City of Youngstown's population. Our calculations indicate that over a ten-year period following lifting of the requirement, as a result of City employees' decisions to relocate outside Youngstown, the City could anticipate a population loss of an additional 1,350 (including potential future City employees) to 1,650 people, in addition to the continuation of its current population decline trend. Despite a 40-year pattern of steady population loss in Youngstown, the "Youngstown 2010 Citywide Plan" reflects an intention to stabilize the population at its current level of approximately 80,000. The projected population loss, resulting directly from rescission of the City's employee residency law, represents nearly 2% of this target "stable" population level, and would create an additional barrier to accomplishment of the citywide plan.

I note in passing that allocation of federal and state revenue-sharing funds to local municipalities is often provided in a formulaic methodology related to population. A loss of an additional 1,350 to 1,650 residents once the City's residency requirement was no longer in effect could lead to further reduction in funding which Youngstown would receive from the federal government and the State of Ohio. I acknowledge this potential revenue loss, but do not attempt to quantify it. I discuss the impact of population loss on the City's income tax revenue in the "FISCAL IMPACTS" section.

Personal income levels. Our employee survey confirmed that Youngstown municipal employees have, on average, much higher levels of household income than City residents as a whole. We employed a GIS model and U.S. census data regarding population and income levels in Youngstown, along with results from our housing analysis described earlier in this report, to project the effect of eliminating the City's employee residency law on personal income levels in the two specified MLS study neighborhoods and across the City. The analysis indicates that the City employee departure, at the rates disclosed by our survey, would decrease average household incomes in the first year after rescission by about \$300 in the two MLS submarkets comprising our "conservative" model, with the loss growing to about \$1,300 annually (about a 3% deficit) after ten years. For Youngstown as a whole, average household incomes would drop by about \$350 in the first year, with the gap growing to about \$1,450 annually (about a 4% deficit) after ten years. These effects are attributable solely to the residency requirement issue, and would further damage Youngstown's attempts to increase average household income and improve its economic future.

The western and southern MLS submarkets, as well as the City as a whole, would also experience corresponding losses of aggregate personal income reaching several hundred million dollars over the first decade following lifting of the residency requirement. I acknowledge but do not attempt to quantify these losses at this time. This reduction in personal income would be expected to lead to reduced economic activity within Youngstown.

Impact on the City's neighborhood stabilization plans. According to the City's recently adopted "Youngstown 2010 Citywide Plan," Youngstown already has an excess supply of more than 3,300 housing units, based on its current population level. Economic theory would predict that the simultaneous loss of 1,350 or more higher-income residents and addition of several hundred homes to the for-sale market would tend to accelerate the existing patterns of disinvestment in housing stock. City staff provided us with a list of 887 houses which have been designated for demolition as of January 25, 2007, but indicated that the potential environmental and other costs allows the City to demolish only about 100 houses per year. We were told that each spring the City conducts a new round of inspections, which typically adds 200 to 300 houses to the demolition list.

City staff represented to us that their strategy for stabilizing the local population and housing market centers on halting the pattern of neighborhood deterioration, by maintaining those neighborhoods they have characterized as "strong" and acting aggressively to combat early indicators of decline in neighborhoods considered "transitional," while recognizing that certain "weak" neighborhoods may already be past the point of recovery. Our study confirms that the bulk of City employees live in the "strong" and "transitional" neighborhoods. Furthermore, the value of City employees' homes (median value of \$82,500 according to our survey) is approximately double that of Youngstown homes as a whole (\$41,500 average sale price in 2005, based on MLS data), and City employees have a median household income more than double that of Youngstown residents as a whole. Accordingly, it is not clear that Youngstown contains a sufficient number of potential homebuyers with the financial means to maintain current City workers' homes in good repair, even if they were able to purchase the properties. Thus, the expected departure of substantial numbers of municipal employees and their families from these neighborhoods, following rescission of the City's residency requirement, coupled with the limited ability of other Youngstown residents to afford the City workers' higher-valued homes, poses a substantial threat to the City's ability to successfully implement its 2010 citywide plan.

FISCAL IMPACTS

This section of the report extends our analysis of employee survey responses and housing sales activity into projections of the associated effect, over time, on tax revenues collected for the City of Youngstown. For the sake of simplicity, we limit our discussion to residential property tax and personal income tax revenues from City employees who are homeowners. This approach again yields conservative results, as we have not attempted to project the impact of an outflow of City residents on commercial income taxes (lost sales revenue and reduced rental income), construction worker income taxes (from the potential reduction in housing starts resulting from the anticipated flood of new listings on the market), or property taxes from rental properties.

We limit our fiscal impact modeling to the revenue side of the City's operations. However, by leading to acceleration of the pattern of private housing disinvestment, the anticipated departure of City employees and their families would likely add to the City's cost burden as well, by increasing the need for demolition activities and for public maintenance of abandoned properties awaiting demolition and of vacant lots following demolition. I acknowledge, but do not attempt to quantify, these costs as an additional fiscal impact of rescinding the City's employee residency law.

Residential Property Taxes

Residential property taxes in Mahoning County are assessed based upon appraisal and value adjustments by the County Auditor's office. The Auditor conducts a full-scale reappraisal every six years (the most recent occurring in 2005), an update every intervening three years, and makes value adjustments annually based upon improvements for which building permits have been obtained. For the City of Youngstown, the annual tax is approximately 1.85% of market value. The City receives 6.99% of residential property tax revenues; the remainder is split between the Youngstown City School District, Mahoning County, the Mill Creek Metropolitan Park District, and the Western Reserve Transit Authority.

As a result of the six-year reappraisal that took place during 2005, our fiscal impact models assume that there will not be substantial revaluation of residential property tax base until 2008, with that adjustment reflected in tax collections during 2009. Accordingly, it is assumed that the potential rescission of the City's residency requirement will have no impact on residential property tax revenues for the first two years, but that the lowered city-wide property values following the out-migration of a substantial number of City employees, as projected in the previous section, will reverberate through the property tax revenues beginning in year 3 (based upon the market value reduction in housing prices from year 2). Table 7 summarizes the potential loss in property tax revenues over the first 10 years, for both our conservative and higher-range models. Lost revenues to the City of Youngstown under the conservative approach aggregate to \$419,000 (with present value, discounted at 5%, of \$339,000). The higher-range model projects losses of \$1,097,000 (present value of \$846,000) to the City over the 10-year period.

**Table 7:
Estimated Fiscal Impact – Property Tax Revenue**

	Conservative Model		Higher-Range Model	
	Lost Revenue to City	% of 2005 Property Tax Revenue	Lost Revenue to City	% of 2005 Property Tax Revenue
Year 1	\$ 0	0.0%	\$ 0	0.0%
Year 2	0	0.0%	0	0.0%
Year 3	122,675	5.6%	225,317	10.3%
Year 4	122,675	5.6%	225,317	10.3%
Year 5	122,675	5.6%	225,317	10.3%
Year 6	16,196	0.7%	98,079	4.5%
Year 7	16,196	0.7%	98,079	4.5%
Year 8	16,196	0.7%	98,079	4.5%
Year 9	1,430	0.1%	63,353	2.9%
Year 10	1,430	0.1%	63,353	2.9%
Total	\$ 419,000		\$ 1,097,000	
Present value at 5%	\$ 339,000		\$ 846,000	

Income Taxes

We assume that any City employees who would move out of Youngstown, upon the potential lifting of the City's residency requirement, would continue their employment for the City. Accordingly, the City would continue to collect the 2.75% income tax on the salaries it pays those employees. However, for employees who relocate outside Youngstown, the City would lose the residence tax it now collects on income earned in other jurisdictions by household members of those employees (spouses and/or children). Those household members receive a 100% credit against their Youngstown residence tax liability (up to a maximum of 2.75% of gross earnings) for income taxes paid to other municipalities.

Our survey suggests that City employees' households average 1.6 wage-earners per household in both the western and southern MLS submarkets and across all of Youngstown. Data obtained from the Texas A&M University's Real Estate Center website indicates that 75% of employees in Mahoning County work outside the City of Youngstown. We base the additional household members' earnings on the average 2005 Mahoning County annual earnings of \$30,353 per the Bureau of Labor Statistics' Quarterly Census of Employment and Wages. For the sake of simplicity, we assume a conservative net current residence tax rate of 1.25% for all City employees' household members working outside Youngstown (based upon an average income tax rate of 1.5% for nine nearby communities who collect local income taxes). Under these assumptions, our conservative and higher-range models project that the City of Youngstown would lose income tax revenue, over the 10-year period following lifting of the residency requirement, totaling \$724,000 and \$925,000, respectively, with present values (discounted at 5%) of \$528,000 and \$671,000. Table 8 summarizes these income tax revenue impacts.

**Table 8:
Estimated Fiscal Impact – Lost Income Tax Revenue**

	Conservative Model	% of 2005 Income Tax Revenue	Higher-Range Model	% of 2005 Income Tax Revenue
Year 1	\$ 14,031	0.03%	\$ 15,461	0.03%
Year 2	37,539	0.08%	41,250	0.09%
Year 3	53,460	0.12%	62,965	0.14%
Year 4	64,740	0.15%	81,986	0.19%
Year 5	73,283	0.17%	95,102	0.22%
Year 6	81,156	0.18%	106,166	0.24%
Year 7	88,705	0.20%	116,115	0.26%
Year 8	96,055	0.22%	125,637	0.28%
Year 9	103,577	0.23%	135,194	0.31%
Year 10	<u>111,395</u>	0.25%	<u>144,951</u>	0.33%
Total	\$ 724,000		\$ 925,000	
Present value at 5%	\$ 528,000		\$ 671,000	

Table 9 combines the property tax and income tax loss projections into overall revenue loss estimates. Combined revenue losses for the City of Youngstown aggregate \$1.1 million (present value of \$867,000) for the conservative model to \$2.0 million (present value of \$1.5 million) for the higher-range model, over the study period.

Table 9:
Summary of Potential Fiscal Impacts – Property Tax and Income Tax

Conservative Model				
Year	Revenue Loss to City: Property Tax	Revenue Loss to City: Income Tax	Total Revenue Loss to City	Percent of City 2005 General Fund Revenues
1	\$ 0	\$ 14,031	\$ 14,031	0.03%
2	\$ 0	\$ 37,539	\$ 37,539	0.07%
3	\$ 122,675	\$ 53,460	\$ 176,135	0.34%
4	\$ 122,675	\$ 64,740	\$ 187,415	0.36%
5	\$ 122,675	\$ 73,283	\$ 195,958	0.38%
6	\$ 16,196	\$ 81,156	\$ 97,352	0.19%
7	\$ 16,196	\$ 88,705	\$ 104,901	0.20%
8	\$ 16,196	\$ 96,055	\$ 112,251	0.22%
9	\$ 1,430	\$ 103,577	\$ 105,006	0.20%
10	\$ 1,430	\$ 111,395	\$ 112,824	0.22%
<i>Total</i>	\$ 419,000	\$ 724,000	\$ 1,143,000	Avg: 0.22%
<i>Present Value</i>	\$ 339,000	\$ 528,000	\$ 867,000	

Higher-Range Model				
Year	Revenue Loss to City: Property Tax	Revenue Loss to City: Income Tax	Total Revenue Loss to City	Percent of City 2005 General Fund Revenues
1	\$ 0	\$ 15,461	\$ 15,461	0.03%
2	\$ 0	\$ 41,250	\$ 41,250	0.08%
3	\$ 225,317	\$ 62,965	\$ 288,281	0.56%
4	\$ 225,317	\$ 81,986	\$ 307,303	0.59%
5	\$ 225,317	\$ 95,102	\$ 320,418	0.62%
6	\$ 98,079	\$ 106,166	\$ 204,244	0.39%
7	\$ 98,079	\$ 116,115	\$ 214,194	0.41%
8	\$ 98,079	\$ 125,637	\$ 223,716	0.43%
9	\$ 63,353	\$ 135,194	\$ 198,547	0.38%
10	\$ 63,353	\$ 144,951	\$ 208,304	0.40%
<i>Total</i>	\$ 1,097,000	\$ 925,000	\$ 2,022,000	Avg: 0.39%
<i>Present Value</i>	\$ 846,000	\$ 671,000	\$ 1,517,000	

REFERENCES

- Bier, T. "Moving Up, Filtering Down: Metropolitan Dynamics and Public Policy." *Brookings Institution Center on Urban and Metropolitan Policy* (September 2001): 1-28.
- Blair, J.P. (1995) *Local Economic Development: Analysis and Practice*. Thousand Oaks, CA: SAGE Publications, Inc.
- Boehm, T.P., H.W. Herzog, A.M. Schlottmann. "Intra-Urban Mobility, Migration, and Tenure Choice." *The Review of Economics and Statistics* (1991): 59-68.
- Butler, Yvonne. 2006. Cleveland City School District (employee location data).
- Cadwallader, M. "Urban Residential Mobility: A Simultaneous Equations Approach." *Transactions of the Institute of British Geographers* 7:4 (1982): 458-473.
- Clark, W.A.V. and S. Davies Withers. "Changing Jobs and Changing Houses: Mobility Outcomes of Employment Transitions." *Journal of Regional Science* 39:4 (1999): 653-673.
- DiPasquale, D. and W.C. Wheaton. (1996) *Urban Economics and Real Estate Markets*. Englewood Cliffs, NJ: Prentice-Hall, Inc.
- Downs, A. "The Challenge of Our Declining Big Cities." *Housing Policy Debate* 8:2 (1997): 359-408.
- Gonzalez, R.A., S.L. Mehay, and K. Duffy-Deno. "Municipal Residency Laws: Effects on Police Employment, Compensation, and Productivity." *Journal of Labor Research* 12:4 (Fall 1991): 439-452.
- Goodman, A.C. "The Other Side of Eight Mile: Suburban Population and Housing Supply." *Real Estate Economics* 33:3 (2005): 539-569.
- Hirsch, W.Z. and A.M. Rufolo. "Economic Effects of Residence Laws on Municipal Police." *Journal of Urban Economics* 17 (1985): 335-348.
- Hirsch, W.Z. and A.M. Rufolo. "Residence Laws and Unionization in Municipal Labor Markets: The Case of Firefighters." *Journal of Labor Research* 7:1 (Winter 1986): 41-58.
- Marsh, A. and A. Kay. "Contextualizing Tiebout: Mobility, Municipalities and Methodology." *Public Finance and Management* 6:1 (2006): 13-40.
- O'Brien, K.M. "Do Municipal Residency Laws Affect Labour Market Outcomes?" *Urban Studies* 34:11 (1997): 1759-1769.

- Quercia, R.G. and G.C. Galster. "Threshold Effects and the Expected Benefits of Attracting Middle-Income Households to the Central City." *Housing Policy Debate* 8:2 (1997): 409-435.
- Plain Dealer. 2006. Home Prices fall as sales slow further. 9/26/6. page C-1.
- Rossi, P.H. (1955) *Why Families Move: A Study in the Social Psychology of Urban Residential Mobility*. Glencoe, IL: Free Press.
- Sharkey, David. 2006. Progressive Urban Real Estate. telephone interview. August 2006.
- Strassman, W.P. "Mobility and Affordability in U.S. Housing." *Urban Studies* 37:1 (2000): 113-126.
- Svoboda, S. "60% of Toledo Public School Teachers Live Outside the District." *The Toledo Blade*. (7/28/03): A1.
- Tiebout, C. "A Pure Theory of Local Public Expenditure." *Journal of Political Economy* 64 (1956): 416-424.

EXHIBIT 1

Curriculum Vitae
December 2006.

ROBERT A. SIMONS, Ph.D.

**Professor
of Urban Planning and
Real Estate Development**

Levin College of Urban Affairs

Cleveland State University
1717 Euclid Avenue
Cleveland, Ohio 44115-2440
(216) 687-5258, 687-2136
(216) 687-9342 fax
e-mail roby@urban.csuohio.edu

Principal, RS&A, Inc.

23101 Wendover Drive
Beachwood OH 44122
(216) 691-0755 tel. and fax
cell (216) 401-1700
www.rasimons.com

EDUCATION

Ph.D., (1990) City and Regional Planning
University of North Carolina at Chapel Hill
Field: Real Estate.

M.S., Economics (1989)
University of North Carolina at Chapel Hill
Field: Public Finance.

M.R.P., City and Regional Planning (1980)
University of North Carolina at Chapel Hill
Fields: Environmental and Land Use Planning

B.A., Anthropology (1976)
Colorado State University, Fort Collins, CO

ACADEMIC POSITIONS

Professor, with Tenure, Cleveland State University, 2000 to present.

Fulbright Scholar, (Lecturing and research) University of the Witwatersrand, Johannesburg, Department of Town and Regional Planning, South Africa, July-December, 2005.

Associate Professor with Tenure, Cleveland State University 1996-2000,

Visiting Associate Professor, Fall semester 1999, Israel Institute of Technology (Technion), Haifa.

Assistant Professor CSU, 1991-1996

Instructor CSU, Fall 1990.

Courses include: (undergraduate) Contemporary Urban Issues, and (graduate) Public Finance and Economics, Urban Development Finance, Plan Implementation, Environmental Finance, and Urban Development Process/Market Analysis, Planning Capstone studio, Ph.D. Urban Research methods.

Temporary Part Time Professor, (real estate development) Kent State University (2001-2004).

Director, Master's of Urban Planning Design and Development (MUPDD) degree, September 2000- May 2003, and Spring 2005.

Director Master's of Arts in Environmental Studies (MAES) August 2002-May 2003.

Coordinator, Certificate in Urban Real Estate Development and Finance (2000-present).

PROFESSIONAL EXPERIENCE

Principal, Robert Simons & Associates, Inc. (RS&A), Cleveland, Ohio, and Chapel Hill, N.C., real estate and housing market and financial research, loan defaults, contaminated land redevelopment, environmental damages, public and private real estate consulting, (part-time) 1987-present.

Associate, Laventhol & Horwath, Denver, Colorado, real estate market and financial analysis, appraisal, 1985-1986.

Director of Real Estate Economics, David Jensen and Associates, Denver, Colorado, multidisciplinary land planning and architectural firm, housing and mixed-use real estate developments, 1984.

Associate, Browne, Bortz & Coddington, Denver, Colorado, economic, financial, real estate and land use analysis, 1980-1983.

Planner, Robert Borg and Associates, Planners and Architects, Breckenridge, Colorado, land planning and site design, 1980.

CONSULTING CONTRACTS/GRANTS (RS&A or Principal Investigator)

Analysis of Office and Service relocation for the Geauga County, Ohio Service Complex, (through CSU Urban Center), for Geauga County Commissioners (2006, underway)

Real estate property damages from leaking underground storage tanks in suburban Baltimore, Maryland (4 separate cases) for the Peter G. Angelos Law Firm, (2006, underway)

Real estate property damages from a leaking underground storage tanks in Queens, NY for the Ripka Bern Napoli Law Firm, (2006, underway)

Real estate property damages from a leaking underground storage tank in Smithtown NY for The Armondo Light and Croft Law Firm, (2006, underway)

Real property damages from a CITGO Oil Spill in the Lake Charles Shipping Channel in Lake Charles, Louisiana, for the Lundy & Davis Law Firm, Lake Charles, LA (2006, underway).

Public Purpose and Blight Analysis for the Flats East Bank Project in Cleveland, Ohio. (through CSU Urban Center), for Cleveland/Cuyahoga County Port Authority (2006, underway)

Analysis of the effect of removing the city employee residency requirement on a City in Ohio, for the Chandra Law Firm, (2006, underway)

Analysis of the effect of removing the city employee residency requirement on the City of Akron, Ohio, for Akron City Law Department, (2006, underway)

Analysis of the effect of removing the city employee residency requirement on the City of Cleveland, Ohio, for Cleveland City Law Department, (2006, underway)

Analysis of Multifamily Housing redevelopment options in Cleveland Inner Ring Suburbs, (through CSU Urban Center) for ULI, Cuyahoga County Development and others, (2006, underway).

Real property damages from a groundwater contamination from PFCs from landfills in Oakdale and Lake Elmo, Minnesota for Beasley Allen Law Firm and other attorneys, (2006, underway).

Affordable and Middle Class Housing On Johannesburg's Mining Sites: A Benefit-Cost Analysis, for iProp, PDNA, and National Nuclear Regulator (South Africa), through Wits University, (2005).

Real Property Damages to the Twee Jonge Gazellen Vineyard in Tulbagh, South Africa, resulting for contaminated bottles, for The Mason Law Firm. (2005).

Real property damages from a groundwater contamination in Endicott, NY, for Phil Johnson and other attorneys, Endicott, NY (2005, underway).

Real property damages from a rail yard spill contamination in Lake Charles, Louisiana, for the Lundy & Davis Law Firm, Lake Charles, LA (2005, underway).

Real property damages from creosote contamination in Pineville and Alexandria Louisiana, for the Lundy & Davis Law Firm, Lake Charles, LA (2005, underway).

Real property damages from DDT contamination on residential and commercial property values in McIntosh, Alabama. For Lambert & Nelson Law firm, (underway).

Real property damages from environmental contamination on residential property values in Crystal Springs, Mississippi For David Nutt and Associates (2005).

Real property damages from water contamination on residential and commercial property values in Moss Point, MS. For Mithoff Jacks Law firm, (2005).

Location analysis of the Cuyahoga County Office Building in Cleveland, OH, for Staubach Company (2005)

Economic and fiscal impacts of Cuyahoga County Airport, Master Plan Update, for C&S Consultants and Cuyahoga County Airport (2005)

Real property damages from a refinery pollution event in Hooven, Ohio, for the Lundy & Davis Law Firm, Lake Charles, LA (2004, underway).

Real property damages for lake pollution in east Texas, for the Condrey Law Firm, LA (2004, underway).

Real property damages from a factory pollution event in Grenada, MS, for the Lundy & Davis Law Firm, Lake Charles, LA (2004, underway).

Real property damages from pollution from a factory in Columbus, MS, for the Lundy & Davis Law Firm, Lake Charles, LA (2004, underway).

Real property damages from a leak of a Shell pipeline in Kankakee, Illinois, for the Cashion Law Firm, Chicago, IL (2004, underway).

Real property damages from a superfund landfill in Jacksonville, FL, for Doffermyre Shields Canfield Knowles & Devine LLP, Atlanta, GA (2004).

Impacts of relocation of a Buick dealer in Lorain Ohio, for Nick Abraham Dealership, Elyria, OH (2004, underway)

Real property damages from a BP refinery in Neodesha, Kansas, for the Edgar Law Firm, KC. MO. (2004).

Real property damages from mercury contamination on residential and commercial property values in McIntosh, Alabama. For Lambert & Nelson Law firm, (2004, underway).

Real property damages from lead contamination on residential and commercial property values in Picher/Cardin Oklahoma. For Seeger Weiss et al Law firm, (2004, underway).

Real property damages from environmental contamination on residential property values in Crystal Springs, Mississippi (2004).

Analysis of land rent increases and associated real estate losses at Columbia Park, in Olmsted Township, Ohio, for Columbia Park Homeowners Association and Kirk Stewart, Attorney, (2003, underway).

Impact of Coal Sludge release on real property in Kentucky, for Foote Law Firm, (2003, underway).

Real property damages from chicken farms on residential and commercial property values for littoral property owners on Grand Lake of the Cherokees in Oklahoma. For Milstein Weiss et al Law firm, (2004).

Real Property Damages caused by a leak from a Pipeline in Parker County, Texas, for Puls Law Firm, (2003).

Origin and Destination study of 4,000 Downtown Bus Riders, for Greater Cleveland Regional Transportation Authority (Principal Investigator) through CSU (2003)

Retail Market and Tax Base Analysis of the Kamm's Corners neighborhood in Cleveland, OH, for Kamm's Corners CDC, (2003).

Impact of leaking underground storage tanks in South Carolina on property values, for Speights and Runyan, (2003)

Real property damages from leaking underground storage tanks in Erie County, Ohio, for Murray and Murray (2003, underway).

Real property damages from natural gas explosion in Hutchinson, Kansas. For Bartimus, Frickleton (2004).

Real estate property damages from leaking underground storage tanks in Washington DC for The Mason Law Firm, (2003, underway)

Impact of a FUDS on residential property values in The District of Columbia for Cohen Milstein Hausfeld & Toll PLC (2002)

Cleveland State University Master Plan, economic and market components. For CSU President's office, (through CSU), (2002)

Fiscal and Economic impacts of four brownfield projects on the Local Economy, For Hemisphere Corp. Clean Ohio Fund Applications (2002)

Impact of a petroleum pipeline rupture on contaminated real property in Hunt County, Texas, for N. Schwartz & Co. and for Ted Lyon, Esq. (2003).

Impact of Coal Sludge release on real property in Kentucky, for Lief Cabraser Heimann and Bernstein LLP (2002).

Impact of Styrene releases on the surrounding neighborhood in Covington, Kentucky, for Doffermyre Shields Canfield Knowles & Devine LLP (2002)

Incidence of Reopeners in Mandatory and Voluntary Brownfield Clean up Programs in the USA, for US EPA, (with Environmental Law Institute, 2002)

Impact of PCB spills on contaminated property in Pennsylvania, for Carey and Danis & Co. (2001).

Impact of a petroleum pipeline spill on contaminated residential property in Maryland, for Cohen Milstein Hausfeld & Toll PLC (2001)

Impact of proposed Southwick new residential construction project on the surrounding neighborhood in Shaker Heights, Ohio, for Centerpoint Properties (2001).

Impact of PCB releases on the surrounding neighborhood in Anniston, Alabama, for Doffermyre Shields Canfield Knowles & Devine LLP (2001).

Land Suitability Analysis of 28 acres near Lost Nation Airport in Lake County, Ohio, for Mazanec Raskin & Ryder Co. (1999).

Retail Market Analysis for Bellaire and W. 130th Intersection in City of Cleveland, for Westown Community Development Corporation (1999)

Economic and Fiscal Impacts of Housing Rehabilitation Activities by NeighborWorks Organizations, (with CSU Urban Center), for Neighborhood Reinvestment Corp (1999)

Second Round: Benchmark Survey of Municipal Brownfield Redevelopment in the Great Lakes (with CSU Great Lakes Environmental Finance Center), for USEPA (1999).

Retail Market Analysis of the Emerald Point and Cleveland Business Park on Wards 20 and 21, Builders Housing Project, for Kamm's Corners Development Corp., and Councilman Michael Dolan, City of Cleveland, Ohio (1998)

Strategic Planning on Retail Market Repositioning for Jamison Properties, Euclid Ohio (1999).

Brownfields Finance Workbook for Great Lakes Practitioners: (with CSU Great Lakes Environmental Finance Center), for USEPA (1998).

Fiscal and Neighborhood Impacts of the Fairview Hospital Expansion and Bosch Builders Housing Project, for Kamm's Corners Development Corp., and Councilman Michael Dolan, City of Cleveland, Ohio (1998)

Effect of a Group Home for Mentally Handicapped on neighborhood property values in Pepper Pike, Ohio, for Janik and Dunn (1998)

Turning Brownfields into Greenbacks: Book Project. Publisher: Urban Land Institute (1998).

Glen Willow Nursing Home Certificate of Need Analysis: Highest and Best use study of two existing Nursing Homes, for Roth, Rolf and Goffman (1997)

The Role of Publicity in Fair Housing Choices in Cuyahoga Falls, Ohio, for Housing Advocates, (1997).

Benchmark Survey of Municipal Brownfield Redevelopment in the Great Lakes (with CSU Great Lakes Environmental Finance Center), for USEPA (1997).

Effects of Pipeline Ruptures on Easement holders and Property Values; Research on property damages attributable to pipeline ruptures. For Reich and Binstock, Colonial Pipeline class action litigation team (1997).

Effects of Leaking Underground Storage Tanks on Nearby Property Values; Research on property damages attributable to underground storage tanks. For Reich and Binstock, UST class action litigation team (1997 through 2000).

Fiscal and Economic Impact Analysis of the Northwest Quadrant Project (with CSU Urban Center). Client: Village of Mayfield, Ohio (1996).

Supply and Demand For Brownfields in Six Great Lakes Metropolitan Areas, (with Don Iannone and CSU Great Lakes Environmental Finance Center), for USEPA (1996).

The Value Impact of Neighborhood Transition on Residential Sales Price (With Roberto Quercia), for Fannie Mae (1996).

The Case for Multifamily Housing: Economic Impact and Planning Issues (with James Webb and Ron Witten), for National Multi Housing Council (1996).

Jump Starting New Urban Housing Markets: Do the Fiscal Benefits Justify the Public Costs? with David Sharkey, for Fannie Mae (1996).

Financing Contaminated Land in Empowerment Zones, with CSU Great Lakes Environmental Finance Center, for USEPA (1996).

The Effects of Leaking Underground Storage Tanks on Residential Property using a Matched Pairs Approach, for Austin Valuation Counselors, Inc. (1995).

New Housing in Cleveland: Determining Market Demand and Impact. With Ivan Maric, Housing Policy Research of CSU Urban Center, For Cleveland Foundation, the City of Cleveland Department of Community Development, and Neighborhood Progress, Inc. (1995).

Identification of "Orphan" Underground Storage Tank Sites in Cuyahoga County, With CSU Urban Center, for State of Ohio, Department of Commerce, Fire Marshal, Bureau of Underground Storage Tank Regulations (1995).

The Effects of Underground Storage Tanks and Toxic Emissions on Residential Sales Values, with CSU Urban Center, funded by Ohio State University Center for Real Estate Education & Research, and the Urban University Program (1994).

Market and Financial Analysis of Proposed Shopping Center at 131st and Miles Avenue in Cleveland, Ohio; for Union Miles Development Corporation (1993).

Cleveland Land Bank Study: various analyses of city Land Bank property policies including housing lot intake, environmental risk issues, housing subsidy costs, and housing lot redevelopment strategies. With CSU Urban Center, for City of Cleveland, Department of Community Development in Cleveland, Ohio (1993).

Site Analysis and Market Assessment of Joint Development Potential of Brookpark and Triskett Rapid Stations in Cleveland, Ohio. For Greater Cleveland Regional Transit Authority (1993).

Cost Minimizing and Land Acquisition Strategies for Residential Lot Development: A Case Study of Cleveland's Glenville Neighborhood; with CSU Urban Center, Cleveland, Ohio (1992).

Inventory and classification of development potential of the real estate portfolio owned by the Greater Cleveland Regional Transit Authority; with CSU Urban Center, Cleveland, Ohio (1991).

Review and expansion of study to identify U.S. cities with substantial growth potential in the 1990s (with Norm Krumholz), for Landauer Real Estate Counselors (1991).

Market Study and Financial Analysis for a Retail and Local Services Shopping Center Near the Lake Monticello Development in Fluvanna County, Virginia (1989).

Review of the Retail Market in Greenville, N.C. (1988).

Loan Loss Experience of the New York Job Development Authority and Connecticut Development Authority: Preliminary Report (1988).

Analysis of Hotel Supply and Potential Hotel Acquisition Opportunities in Raleigh-Durham-Chapel Hill, N.C. (1987).

Apartment Vacancy Survey in Northeast Raleigh, N.C. (1987).

An Econometric Analysis of Locational Attributes of Subshop Franchises in NC (1987).

ARTICLES

“The experience of Canadian Tribal Land Claims” (with Shwetha Pai) American Real Estate Society Research Monograph on Indigenous Property (forthcoming 2007).

“A Meta Analysis of the Effect of Environmental Contamination and Positive Amenities on Residential Property Values” (with Jesse Saginor) Journal of Real Estate Research.. 28 1:71-104. (2006).

“Toxic Mold Issues And Effects On Property Values: A Preliminary Analysis” (with Ron Throupe) The Appraisal Journal Spring 2005: 156-166.

“Determining Market Perceptions On Contaminated Residential Property Buyers Using Contingent Valuation Surveys” (with Kimberly Winson Geideman), Journal of Real Estate Research.27 2:193-220. (2005.)

“The Effect of Freight Railroad Track Activity on Residential Property Values in Cuyahoga County, Ohio”. (with Abdelaziz El Jaouhari), The Appraisal Journal (Summer 2004: 223-233).

"Understanding the Outcomes Of Brownfield Cleanup Programs" (with John Pendergrass and Kimberly Winson) Journal of Environmental Planning and Management (2004).

"The Fiscal and Economic Impacts of Housing Rehabilitation on the Local Economy," (with A.J. Magner and Esmail Baku) Journal of Real Estate Research (2003).

"Are Reopeners really an Issue in Brownfield Redevelopment?: A survey of State Voluntary Clean up Programs." (with John Pendergrass and Kimberly Winson) Journal of Environmental Planning and Management (2003).

"Estimating Proximate Property Damage From PCBs In A Rural Market: A Multiple Techniques Approach." The Appraisal Journal, (October 2002).

"Brownfield Redevelopment Activities in Great Lakes Communities: A Benchmark Assessment"(with Abdelaziz El Jaouhari) Economic Development Commentary, vol 25 no 3 (Fall 2001).

"The Effects of An Oil Pipeline Rupture on Single Family House Prices". (with Kimberly Winson and Brian Mikelbank), The Appraisal Journal October 2001.

"The Effect of Residential Investment on Nearby Property Values: Evidence from Cleveland, Ohio", (with Chengri Ding and Esmail Baku) Journal of Real Estate Research 19 1/2 . 2000.

"Deed Restrictions and Other Institutional Controls as Tools to Encourage Brownfield Redevelopment" (with Heidi Gorovitz Robertson) Environmental Law and Practice 7 1 Summer 1999.

"The Effects of Pipeline Ruptures on Non-Contaminated Residential Easement Holding Property in Fairfax County" Appraisal Journal, July 1999.

"The Price and Liquidity Effects of UST leaks from Gas Stations on Residential and Commercial Property Values" (with William Bowen and Arthur Sementelli), Appraisal Journal, April 1999

"The Effects of Pipeline Ruptures on Rural Residential Property with groundwater Contamination and a Negotiated Settlement Package", Real Estate Issues, 1999.

"Contaminated Land: Do Property Registers Do More Harm Than Good? An Analysis of the UK and USA Approaches to Public Management of Brownfields". (with Paul Syms) (UK). 1999.

"Government Regulation of Contaminated Land: A Tale of Three Cities" (with

Nelson Chan and Rodney Jefferies), Environmental and Planning Law Journal (Australia), 1998.

"How Many Brownfield Sites are There?" Journal of Public Works Management and Policy, Vol 2, no 3 1998.

"Brass Mill Mall: Bringing New life to a Brownfield Site in Waterbury, Connecticut" (with Michael Leccese), Urban Land, June 1998.

"The Value Impact of Neighborhood Transition on Residential Sales Price", Journal of Real Estate Research, Vol. 15 No 2. (With Roberto Quercia and Ivan Maric) 1997.

"The Effect of Underground Storage Tanks on Residential Property Values." Journal of Real Estate Research, Vol 14 No.1/2 (with William Bowen and Arthur Sementelli), 1997.

"Liquidity and Delayed Transactions with Leaking Underground Storage Tanks: Some Evidence from Cleveland, Ohio" The Appraisal Journal, (with Arthur Sementelli), July 1997.

"Regulation of Leaking Underground Storage Tanks: Unintended Side Effects" Economic Development Quarterly, (with Arthur Sementelli), August 1997.

"Supply and Demand for Brownfields in Great Lakes Cities" (with Don Iannone) Urban Land, June 1997.

"Jump Starting New Urban Housing Markets: Do the Fiscal Benefits Justify the Public Costs?"(with David Sharkey), Housing Policy Debate, Spring 1997.

"Financing Environmentally Contaminated Land in the Great Lakes Empowerment Zones", Economic Development Commentary, Fall 1996.

"The Market for Quantitative and Research Methods in Planning: Do Schools Teach What Practitioners Practice?" Journal of Planning Education and Research (with Sanda Kaufman), (Fall 1995).

"Using GIS To Make Micro-Level Real Estate Decisions for Local Government: A Financial and Environmental Analysis of Residential Lot Redevelopment in a Cleveland Neighborhood." (with Mark Salling), URISA Journal, (Spring 1995).

"Industrial Real Estate Mortgage Default Experience of the New York State Job Development Authority Second Loan Program: A Preliminary Investigation, AREUEA Journal, (Winter 1994).

"Public Real Estate Management and the Planner's Role," Journal of the American Planning Association, (Summer 1994).

"How Clean is Clean? The Effect of Proposed Governmental Regulations on Vacant and Under-Utilized Inner-City Land Being Recycled in the Residential Market," The Appraisal Journal, (July 1994).

"Public Real Estate Management--Adapting Corporate Practice to the Public Sector: The Experience in Cleveland, Ohio," Journal of Real Estate Research, (Fall 1993).

"State Public Lending Practice and Industrial Real Estate Mortgage Default: The New York Experience," Economic Development Quarterly, (February 1993).

"What Can Public Real Estate Managers Learn from Corporate Practice? The Experience in Cleveland, Ohio," Journal of Property Management, (January 1993).

"Site Attributes in Retail Leasing: An Analysis of a Fast Food Restaurant Market," The Appraisal Journal, (October 1992).

"Comparing Regional Classifications for Real Estate Portfolio Diversification" (with Emil Malizia), Journal of Real Estate Research, (Spring 1991).

"Private Prisons--A Real Estate Investment and Management Opportunity," Real Estate Insight, N.Y., Laventhol and Horwath (April 1986).

"Emerging Trends in the Homebuilding Industry," Colorado Builder (September 1984).

BOOK CHAPTERS

"Brownfield Voluntary Remediation Programs in the USA: Orphan Stepchild or Gifted Protege?" (with Kimberly Winson) book chapter in Environmental Policy Issues (Dianne Rahm, Ed.), (2002).

"Creative Financing for Brownfield Redevelopment" In Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property book chapter, Todd Davis, ed., Chicago: American Bar Association, chapter 7 (2002).

"Financing Public Investment in Retail Development", In: Financing Economic Development (Sammis White, Ed.) with Kimberly Winson and William Bowen (2002).

"Development and Issues of Inner-City Retail Niche Markets", (with John Brennan) peer-reviewed book chapter in ARES/ICSC sponsored Megatrends in Retail Property, John Benjamin, ed., Boston: Kluwer, 1996.

"Planning Issues of Retail Development", peer-reviewed book chapter in ARES/ICSC sponsored Megatrends in Retail Property, John Benjamin, ed., Boston: Kluwer, 1996.

LEAD-AUTHORED BOOK

When Bad Things Happen To Good Property, (lead author) Washington DC: Environmental Law Institute. 2005. (released 2006)

Turning Brownfields into Greenbacks: Redeveloping and Financing Contaminated Urban Real Estate. Washington DC: Urban Land Institute 1998.

RESEARCH IN PROGRESS

Lead Editor, American Real Estate Society Research Monograph on Indigenous Property (forthcoming 2007).

This Land Is Your Land, This Land Is My Land: Toward A Global Analysis Of Indigenous Tribal Land Claims (with Rachel Malmgren), working paper, 2006.

"Real estate Practices Among Indigenous Peoples in South Africa: Pressure on the Urban Fringe" (with Francois Viruly) submitted to American Real Estate Society Research Monograph on Indigenous Property (2006).

"Affordable and Middle Class Housing On Johannesburg's Mining Sites: A Benefit-Cost Analysis" (with Aly Karam) submitted to Development Southern Africa 2006.

"Use of Contingent Valuation Analysis in A Developing Country: Market Perceptions of Contamination on Johannesburg's Mine Dumps" (with Aly Karam and Jesse Saginor) 2006.

"Determining Offsite Damages to Non-residential property From Leaking Underground Storage Tanks" (with Jesse Saginor) 2006.

"The Equity and Efficiency implications of the National Clean Air Act Acid Rain Program." (with Kathleen Gaiser and Kevin Snape), Working paper (2001).

"The Effect of Rapid Transit Stations and Railroad Track Activity on Residential Property Values in Cuyahoga County, Ohio". (with Abdelaziz El Jaouhari), conference paper (2002).

BOOK REVIEWS

The Lexus and the Olive Tree, By Thomas Friedman, in The Appraisal Journal 2004.

Contaminated Land: Reclamation, Redevelopment and Reuse in the USA and European Union, by Peter Meyer, Richard Williams and Kristen Yount, in Journal of the American Planning Association, (Summer 1996).

Insurance Redlining, By Gregory Squires, (ed), in Journal of the American Planning Association, 1999.

DOCTORAL DISSERTATIONS

Eminent Domain And Its Use As An Economic Development Tool. Chair. Dr. Jesse D. Saginor. 2006

Infill Housing Determinants In Cleveland, Ohio. Dr. J.W. Kim, reader. 2006

Primary Cities and Trade Policy in Economic development. Chair. Dr. Abdelaziz El Jaouhari. 2004.

Residential Redevelopment on Brownfields in Chicago. Chair. Dr. Kimberly Winson Geideman. 2003.

Public Real Estate Investment Trusts. Reader. Dr. Michael Seiler. 2000.

AWARDS

Fulbright Scholarship, for six months starting July 2005, at the University of the Witwatersrand, Johannesburg, South Africa, Faculty of Town Planning

Sabbatical, one year from Cleveland State University, 2003-2004.

Lady Davis Fellowship for teaching and research at the Technion-Israel Institute of Technology, fall semester 1999.

ARES Manuscript prize for best paper presented at the 1999 annual ARES meeting. (with Chengri Ding and Esmail Baku)

Sabbatical, for two quarters, from Cleveland State University, Levin College of Urban Affairs, Fall 1996 and Winter 1997.

Tenure, at Cleveland State University, Levin College of Urban Affairs, 1996.

Highest Instructor Rating (out of 37 instructors) for Presentation of "Planners in Economic Development: Friend or Foe?" at the Ohio Economic Development Training Course, March 1994.

IREM/ARES Manuscript prize for best paper presented at the 1992 annual ARES meeting on Asset/Property Management.

PRESENTATIONS

This Land Is Your Land, This Land Is My Land: Toward A Global Analysis Of Indigenous Tribal Land Claims (with Rachel Malmgren) ACSP, Fort Worth, TX November 2006.

Real estate Practices Among Indigenous Peoples in South Africa: Pressure on the Urban Fringe” (with Francois Viruly) at ARES, April 2006, Key West, Florida.

Use of Contingent Valuation Analysis in A Developing Country: Market Perceptions of Contamination on Johannesburg’s Mine Dumps” (with Aly Karam and Jesse Saginor) at ARES, April 2006, Key West, Florida.

A Meta Analysis of the Effect Of Environmental Contamination on Commercial Property Values“ (with Jesse Saginor and Ron Throupe) at ARES, April 2005, Santa Fe, New Mexico.

A Meta Analysis of the Effect Of Environmental Contamination on Residential Property Values“ (with Jesse Saginor) 2004. at ARES, April 2004, Captiva Island, Florida.

“The Impact Of Leaking Underground Storage Tanks On Residential Property Buyers” (with Kimberly Winson-Geideman), at ARES Monterey, CA April 2003.

“ Understanding the Outcomes Of Brownfield Cleanup Programs” (with John Pendergrass and Kimberly Winson) ACSP, Baltimore, Maryland, November 2002.

“The Effect of Rapid Transit Stations and Railroad Track Activity on Residential Property Values in Cuyahoga County, Ohio”. (with Abdellaziz El Jaouhari), ACSP, Baltimore, Maryland, November 2002.

“The Effect of Freight Train Activity on Residential Property Values in Cuyahoga County, Ohio”. (with Abdelaziz El Jaouhari), presented at the annual meeting of the American Real Estate Society in Ft. Myers, Florida, April 2002.

“The Equity and Efficiency implications of the National Clean Air Act Acid Rain Program.” (with Kathleen Gaiser and Kevin Snape), ACSP meeting, Cleveland, OH November 2001.

“The Effects of An Oil Pipeline Spill on Residential Property Values on the Patuxent River in Maryland” (with Kimberly Winson and Brian Mikelbank),

presented at the annual meeting of the American Real Estate Society in Coeur D'Alene, Idaho, April 2001.

"The Effect of Railroad Track Activity on Residential Property Values in Cuyahoga County, Ohio" (with Abdellaziz El Jaouhari), presented at the annual meeting of the American Real Estate Society in Coeur D'Alene, Idaho, April 2001.

"The Fiscal and Economic Impacts of Housing Rehabilitation on the Local Economy," (with AJ Magner and Esmail Baku), ACSP, Atlanta, Georgia November 2000.

"The Effects of Leaking Underground Storage Tanks on Residential and Commercial Property Values: Statistical Issues" at the MEALEY'S Publications meeting on UST Litigation, Phoenix, Arizona, October 2000

"Reopeners in State Voluntary Clean Up Programs", at Brownfields 2000 in Atlantic City, New Jersey, October 2000 (with John Pendergrass)

"Brownfields In Israel", Organizer and Kick-off Speech at ISRAEL BROWNFIELDS 2000, at the Technion University, Haifa, Israel, January 2000.

"Introduction to Brownfields", and "Local Initiatives to Finance Brownfields: the Great Lakes Experience", at the CUED Brownfields Workshop In Cincinnati, Ohio, July 1999.

"Brownfields in Florida", Keynote speaker at 2nd Annual Florida Brownfields Conference in Jacksonville, Florida, May 1999.

"The Effects of Pipeline Ruptures on Non-Contaminated Residential Easement Holding Property in Fairfax County" ARES meeting in Tampa, Florida April 1999.

The Long Road Ahead for Brownfields, and What's in it for US?: Public Investment in Brownfields, at the Brownfields 1998 conference in Los Angeles, California, November 1998.

Home Building Forecast for 1999. Greater Cleveland Homebuilders Association, November 1998.

The Effects of Leaking Underground Storage Tanks on Residential and Commercial Property Values at the MEALEY'S Publications meeting on UST Litigation, Jacksonville, Florida, June 1998

The Price and Liquidity Effects of UST Leaks on Adjacent Contaminated Residential and Commercial Property (with William Bowen and Arthur

Sementelli), at the annual meeting of The American Real Estate Society in Monterey, California, April 1998.

"Brownfields in Northeastern Ohio" at the 1997 meeting of the Cleveland Engineering Society, October 1997.

"Economic Reality Check: Lessons From Brownfield Redevelopment Cases", at the Brownfields '97 conference in Kansas City, MO, September 1997.

"Lessons From Brownfield Redevelopment Cases: 13 Deals in 7 Venues", at the annual meeting of The American Real Estate Society in Sarasota, Florida, April 1997.

"Supply and Demand for Brownfields in Great Lakes Cities" Presented at Cuyahoga County Brownfields Finance working Group, and Ohio Land Use Conference, Columbus, Ohio, March 1997.

"Contaminated Land: Do Property Registers Do More Harm Than Good? An Analysis of the UK and USA Approaches to Public Management of Brownfields". (with Paul Syms) at the Pacific Rim Real Estate Society Meeting in Palmerston, North, New Zealand, January 1997.

"Supply and Demand for Brownfields in Great Lakes Cities: Implications for community Involvement." and "Financing Environmentally Contaminated Land in the Great Lakes Empowerment Zones", at the Small Cities Conference in Louisville, Kentucky, October 1996.

"Supply and Demand for Brownfields in Great Lakes Cities: Implications for community Involvement." Brownfields '96 conference in Pittsburgh PA, September 1996.

"Financing Environmentally Contaminated Land in the Great Lakes Empowerment Zones", at the annual meeting of The American Real Estate Society in Lake Tahoe, CA, April 1996.

"Emerging Issues in Brownfields Finance and Development", at the annual meeting of The American Planning Association in Orlando, Florida, April 1996.

"The Value Impact of Neighborhood Transition on Residential Sales Price", (With Roberto Quercia and Ivan Maric). Presented at the annual meeting of the American Collegiate Schools of Planning in Detroit MI, October, 1995.

"Negative Proximity Influence of Leaking Underground Storage Tanks/Toxic Neighbors on Residential Property: Issues of Information and

Measurement." (with Rudy Robinson), at the annual meeting of The American Real Estate Society in Hilton Head, SC, April 1995.

"Two Urban Environmental Real Estate Research Issues in the United States of America: Brownfields and Underground Storage Tanks" Presented to the Faculty of the Department of Property, Univ. of Auckland, New Zealand, February, 1995.

"Management Issues For Leaky Underground Storage Tanks: How Are Property Transactions and Sales Prices Affected by Regulation of Contamination?" (with Arthur Sementelli), Presented at the annual meeting of the American Collegiate Schools of Planning in Phoenix, AZ, November, 1994.

"Economics, Finance and Budgeting Topics for the AICP Exam." Presented at the annual meeting of The American Planning Association in San Francisco, CA, April 1994, and at the 1996 meeting in Orlando, Florida.

"Using GIS to Make Micro-Level Real Estate Decisions for Local Government: A Financial and Environmental Analysis." Presented at the annual meeting of The American Real Estate Society in Santa Barbara, CA, April 1994.

"The Effect of Underground Storage Tanks and Toxic Emissions on Residential Sales Values." Presented at the annual meeting of The American Real Estate Society in Santa Barbara, CA, April 1994.

"The Market for Quantitative and Research Methods in Planning Practice: Do Schools Teach What Practitioners Practice?" Presented at the annual meeting of the American Collegiate Schools of Planning in Philadelphia, PA., October, 1993.

"Inner City Property Abandonment, Property Tax Delinquency and Net Equity: A Test of the Option-based Model in Cleveland, Ohio." Presented at the annual meeting of the American Real Estate Society in Key West, Florida, April, 1993.

"Public Real Estate Management and the Planner's Role: The Experience in Cuyahoga County, Ohio." Presented at the annual meeting of the American Collegiate Schools of Planning in Columbus, Ohio, October, 1992.

"Public Real Estate Management." Presented at the annual meeting of the American Real Estate Society in San Diego, California, April 1992.

"Borrower Net Equity as a Decision Variable in Industrial Real Estate Mortgage Default." Presented at the annual meeting of the American Real Estate and Urban Economics Association Meetings in New Orleans, LA, January, 1992.

COMMUNITY SERVICE PROJECTS

Lower Big Creek Recreation Trail, Cleveland, Ohio (class project) for Cleveland Metroparks, Spring 2006.

Regional Government Alternatives for Greater Cleveland, Ohio (class project) Spring 2005.

Burke Lakefront Airport: Comprehensive land use and Alternatives Analysis, For City of Cleveland, Planning Commission (class project) Spring 2003.

EcoVillage Cleveland: Comprehensive Planning and real estate analysis, Ohio City, Cleveland, for EcoCity Cleveland and Detroit Shoreway Community Development Organization (class project) Spring 2001.

Housing Market Analysis for the NEC site in Ohio City, Cleveland Ohio, for Cleveland Urban Properties, (Class Project) Summer 2000.

Financial analysis for the commercial and industrial redevelopment in the Fairfax neighborhood, Cleveland, Ohio. Client: Fairfax Renaissance Development Corporation. (Class Project) Spring 1997.

Financial Analysis for the Retail Component of Hispanic Village. Client: Hispanic Business Association of Greater Cleveland. (Class Project) Spring 1996.

Market Development Potential for Retail and Local Services for Hispanic Village. Client: Hispanic Business Association of Greater Cleveland. (Class Project) Winter 1996.

Financial Analysis of Low Income Housing Tax Credit Sites in the St. Clair area of Cleveland, Ohio. Client: Enterprise Foundation (Class Project) Spring 1995.

Financial Analysis of Three Infill Housing Sites in the Ohio City Neighborhood of Cleveland, Ohio. Client: Near West Housing Corp. (Class Project) Spring 1994.

Retail Leakage Analysis and Evaluation of Alternative Retail Development Sites in Garfield Heights. Client: City of Garfield Heights, Ohio. (Class Project) Winter 1994.

Financial Analysis of Proposed Shopping Center at 152nd and St. Clair Avenue in Cleveland, Ohio. Client: City of Cleveland, Department of Community Development. (Class Project) Spring 1993.

Market Redevelopment Potential for Retail and Local Services at the Van Aken Rapid Station in Shaker Heights, Ohio. Clients: The Greater Cleveland Regional

Transportation Authority and Planning Department, City of Shaker Heights.
(Class Project) Winter 1993.

Financial Analysis of Converting the Noble School Site to a Proposed Hotel
Project at I-90 and Babbitt Road. Client: City of Euclid, Ohio. (Class Project)
Spring 1992.

Market Redevelopment Potential for Retail and Local Services at the Windermere
Rapid Station in East Cleveland, Ohio. Clients: The Greater Cleveland Regional
Transportation Authority and Department of Community Development, City of
East Cleveland. (Class Project) Fall 1991.

Financial Analysis of Proposed Shopping Center at 131st and Miles Avenue in
Cleveland, Ohio. Client: Union Miles Development Corporation. (Class Project)
Spring 1991.

PROFESSIONAL ORGANIZATIONS

American Real Estate Society (ARES), (Fellow, member of board of directors,
Director of Career Development and Jobs website, since 2004)

American Institute of Certified Planners (AICP) since 1983

American Planning Association (APA)

Appraisal Institute, Academic Review Panel, The Appraisal Journal (2001-2005).

Clean Air Conservancy, Cleveland Ohio (Board Member 1997-2003)

Corporate Real Estate Executives Network (CORENET), Northeast Ohio Board
Member (2000-2003)

Cleveland Hillel, Board member 2002-2005

Urban Land Institute (ULI), Member, (National) Sustainable Development
Council (2004)

EXPERT WITNESS

Real estate property damages from leaking underground storage tanks in suburban
Baltimore, Maryland (4 separate cases) for the Peter G. Angelos Law Firm,
(2006, underway)

Real estate property damages from a leaking underground storage tank in
Smithtown NY for The Armondo Light and Croft Law Firm, (expert, underway)

Real property damages from a CITGO Oil Spill in the Lake Charles Shipping
Channel in Lake Charles, Louisiana, for the Lundy & Davis Law Firm, Lake

Charles, LA (2006, underway).

Public Purpose and Blight Analysis for the Flats East Bank Project in Cleveland, Ohio. (through CSU Urban Center), for Cleveland/Cuyahoga County Port Authority (2006, underway)

Analysis of the effect of removing the city employee residency requirement on a City in Ohio, for the Chandra Law Firm, (2006, underway)

Analysis of the effect of removing the city employee residency requirement on the City of Akron, Ohio, for Akron City Law Department, (expert, underway)

Analysis of the effect of removing the city employee residency requirement on the City of Cleveland, Ohio, for Cleveland City Law Department, (expert, underway)

Real property damages from a groundwater contamination from PFCs from landfills in Oakdale and Lake Elmo, Minnesota for Beasley Allen Law Firm and other attorneys, (deposition and testifying expert, underway).

Real property damages to the Twee Jonge Gazellen Winery in Tulbagh, South Africa related to contaminated bottling problems, for The Mason Law Firm, (expert, 2005).

Real property damages from a TCE groundwater Plume on residential and commercial property values in Endicott NY, For Phil Johnson and other attorneys (expert, underway)

Real property damages from a rail yard spill contamination on residential property values in Lake Charles, Louisiana, For Lundy Davis Law firm (expert, underway)

Real property damages from creosote contamination on residential property values in Alexandria, Louisiana, For Lundy Davis Law firm (expert, underway)

Real property damages from creosote contamination on residential property values in Pineville, Louisiana, For Lundy Davis Law firm (expert, underway)

Real property damages from environmental contamination on residential property values in Crystal Springs, Mississippi Williams et al vs. Kuhlman Corp. et al (expert 2005).

Real property damages from dioxin environmental contamination on residential property values on Lake Sam Rayburn, Texas Anderson et al vs. Abitibi et al (deposition and testifying expert 2005).

Real property damages from DDT contamination on residential and

commercial property values in McIntosh, Alabama Adams et al vs. Ciba Specialty Chemicals Corp et al. For Lambert & Nelson Law firm, (underway)

Real property damages from water contamination on residential and commercial property values in Moss Point, MS. Hulbert et al. vs. Morton International, Rohm & Hass et al. For Mithoff Jacks Law firm, (underway).

Real property damages from creosote contamination on residential property values in Grenada Mississippi, Ellis et al. vs. Koppers et al For Lundy Davis Law firm (deposition and testifying expert, underway)

Real property damages from groundwater contamination on residential property values in Columbus, Mississippi, Vaughn et al vs. Johnson Electric Automotive et al For Lundy Davis Law firm (testifying expert, underway)

Real property damages from a pipeline leak in Kankakee, Illinois, Quick et al vs. Shell et al. for the Cashion Law Firm, Chicago, IL (2004, expert, underway).

Real property damages from a superfund landfill in Jacksonville, FL, Williams et al vs. City of Jacksonville et al. for Doffernyre Shields Canfield Knowles & Devine LLP, Atlanta, GA (2004, testifying expert and deposition, underway).

Impacts of relocation of a Buick dealer in Lorain Ohio, for Nick Abraham Dealership, Elyria, OH (2004, underway, deposition)

Real property damages from a BP refinery in Neodesha, Kansas (2004, expert, underway).

Real Property Damages caused by mercury contamination in McIntosh, Alabama Dorothy Reed et al vs. Olin Corporation et al. (testifying expert, 2004 underway, deposition).

Real Property Damages caused by lead contamination in Picher/Cardin Oklahoma, Cole et al vs. Asarco Inc. et al. (testifying expert, 2004 underway, deposition).

Real property damages from environmental contamination on residential property values in Crystal Springs, Mississippi Kellum et al vs. Kuhlman Corp. et al (consulting expert 2004, testified at Daubert hearing).

Analysis of land rent increases and associated real estate losses at Columbia Park, in Olmsted Township, Ohio, for Columbia Park Homeowners Association and Kirk Stewart, Attorney, Pojman et al vs. Columbia Brook Park Management LLC et al (2003, underway, consulting expert).

Real property damages from chicken farms to residential and commercial

property values for littoral property owners on Grand Lake of the Cherokees in Oklahoma. Thompson et al vs. Tyson Foods et al (2003, testifying expert and deposition).

Real Property Damages caused by a leak from a Pipeline in Parker County, Texas, (2003, underway). McCauley vs. Chevron Pipe Line Company (testifying expert).

Real property damages from leaking underground storage tanks in Erie County, Ohio, VanRaepenbusch et al v. Sunoco, Inc., et al. (2003, testifying expert, deposition).

Real property damages from natural gas explosion in Hutchinson, Kansas. Dodge, Schmidt et al v. Kansas Gas Service Co., ONEOK, Inc. et al. (2003, testifying expert, deposition and trial).

Real property damages from a FUDS on residential property values in The District of Columbia Jach et al v. American University. (2003, expert)

Real property damages from leaking underground storage tanks in the District of Columbia Nnadili et al vs. Chevron (2002, testifying expert and deposition expert).

Real property damages from leaking underground storage tanks in South Carolina Fairey vs. Exxon class action suit (2002, testifying expert and deposition).

Real Property Damages caused by a Pipeline Rupture in Hunt County, Texas, (2002, underway). Abundiz et al v Explorer Pipeline et al. (testifying expert and deposition).

Real Property Damages caused by a Pipeline Rupture in Hunt County, Texas, (2002, underway). Browning et al v Explorer et al (testifying expert and deposition).

Real property damages caused by Styrene releases on the surrounding neighborhood in Covington, Kentucky class action suit Wilson v Interplastic Manufacturing Corp. (2001, underway, testifying expert and deposition).

Real property damages caused by PCB releases on the surrounding neighborhood in Anniston, Alabama, Owens v Monsanto Corp., multi-plaintiff lawsuits (2001, testifying expert and deposition).

Real Property Damages caused by PCB spills on contaminated property in Pennsylvania, (2000, underway, expert).

Real Property Damages caused by a Pipeline Rupture in Maryland, In Re

Swanson Creek Oil Spill Litigation, (2001, testifying expert and deposition and testimony as an expert in real estate environmental damages in federal court on class certification).

Real Property Damages caused by Leaking Underground Storage Tanks, class action suit Peters et al vs. Amoco et al., (1997, underway, testifying expert and deposition).

Real Property Damages caused by Pipeline Ruptures, class action suit Wesley et al. vs. Colonial Pipeline Co., 1997.

Fair Housing Program needs, based upon residential location decision making and newspaper activity, Buckeye Hope et al. vs. City of Cuyahoga Falls, Ohio, (1997, testifying expert and deposition).

Real Estate analysis of suitable uses for a 29 acre property near Lost Nation Airport, Slyman vs. City of Willoughby, Ohio County Court of Common Pleas, Case # 98CV000619 (1999, expert)

Bio: Robert A. Simons, Ph.D.

Robert A. Simons is a Professor and former director of the Master of Urban Planning, Design and Development program at the Levin College of Urban Affairs at Cleveland State University in Cleveland, Ohio. He is also the faculty advisor for the Certificate Program in Real Estate Development and Finance, offered in conjunction with the Nance College of Business at CSU. During Fall 2005, Dr. Simons was a Fulbright Scholar at Wits University in Johannesburg, South Africa. Dr. Simons received his Ph.D. from the University of North Carolina at Chapel Hill in City and Regional Planning, with an emphasis in real estate. He also holds a Master of Regional Planning and a Master of Science in Economics, both from U.N.C. His undergraduate degree in anthropology was earned at Colorado State University. He has been a member of the American Institute of Certified Planners (AICP) since 1983. At the Levin College of Urban Affairs, Dr. Simons teaches courses in real estate development, market analysis and finance, public economics Ph.D. research methods and environmental finance. Dr. Simons has published over 40 articles and book chapters on real estate, urban redevelopment, environmental damages, housing policy and brownfields redevelopment. He authored a book entitled Turning Brownfields into Greenbacks, (published by Urban Land Institute), and When Bad Things Happen to Good Property, (published by Environmental Law Institute in 2006). Dr. Simons has an active consulting practice, and has served as an expert witness on over 40 matters related to real estate, housing markets, and environmental damages.

EXHIBIT 2**LIST OF MATERIALS REVIEWED IN CONJUNCTION WITH THIS CASE**

Anderson Economic Group, a division of BBK, Ltd., "Economic and Financial Impact Assessment of a Change in Residency Requirements in the City of Detroit, Michigan," Revised September 19, 2000

Charlie Post, M.A., M.S., Project Manager, Center for Housing Research and Policy, Maxine Goodman Levin College of Urban Affairs; NODIS (for building permits data)

City of Youngstown: Listing of Properties Eligible for Demolition, January 25, 2007

City of Youngstown, Civil Service Department: Employee telephone numbers, employee addresses, and summary data for city employees

City of Youngstown, Ohio, "Audited Financial Statements for the Year Ended December 31, 2005", at <http://www.auditor.state.oh.us/AuditSearch/>

City of Youngstown, Ohio: "Neighborhood Conditions & Future Land Uses, City Employee Residences, 1988 Forward" (map prepared by The Center for Urban and Regional Studies, Youngstown State University)

City of Youngstown and Youngstown State University, *Youngstown 2010 Citywide Plan*, copyright 2005

Cleveland *Plain Dealer*. May 2, 2006. "3 Cities Sue Taft to Keep Residency Rules." Page B3.

Complaint for this case

Mahoning County Treasurer, ratebook pages (millage and taxable values) for City of Youngstown

Progressive Urban Real Estate: Youngstown home sales data, 1992-2006, from the Northern Ohio Regional Multiple Listing Service, provided by Lee Chilcote, Jr.

Regional Income Tax Agency, tables of personal income tax rates for communities in Mahoning and Trumbull Counties, Ohio, December 31, 2005

Texas A&M University, Real Estate Center: Youngstown City Employment, 1990-2006, at <http://recenter.tamu.edu/data/empct/PS390730.htm>; and Mahoning County Employment, 1990-2006, at <http://recenter.tamu.edu/data/empc/LAUCN390990.htm>

U.S. Census Bureau, Building permit data (single-family and two-family housing starts) for Youngstown, Ohio, 1980-2005, at <http://censtats.census.gov/bldg/bldgprmt.shtml>

U.S. Census Bureau, Index of Population Estimates 1990-1999, at <http://www.census.gov/popest/archives/1990s/su-99-07/>

U.S. Census Bureau, Population Estimates 2000-2005 at http://factfinder.census.gov/servlet/DTable?_bm=y&-context=dt&-ds_name=PEP_2005_EST&-CONTEXT=dt&-mt_name=PEP_2005_EST_G2005_T001&-tree_id=805&-redoLog=false&-all_geo_types=N&-caller=geoselect&-geo_id=06000US3909988000&-search_results=01000US&-format=&-_lang=en

U.S. Census Bureau, data for city of Youngstown, Ohio from Census 2000 (Summary File 1 – Tables H4, Tenure; H12, Average Household Size of Occupied Housing Units by Tenure; P15, Households), at <http://factfinder.census.gov>

U.S. Census Bureau, data for city of Youngstown, Ohio from Census 2000 (Summary File 3 – Tables H18, Average Household Size; H76, Median Value, Specified Owner-Occupied Housing Units; H85, Median Value, All Owner-Occupied Housing Units; H86, Aggregate Value, All Owner-Occupied Housing Units; P25, Population by Place of Residence in 1995; P56, Median Household Income), at <http://factfinder.census.gov>

U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index Series CUUR0200SA0, CUUS0200SA0, “Consumer Price Index – All Urban Consumers, Not Seasonally Adjusted, Midwest Urban, All items,” at <http://data.bls.gov>

U.S. Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages Data Series ENU3909950010, “Average Annual Pay, All industries, All establishment sizes, Mahoning County, Ohio,” at <http://data.bls.gov>

EXHIBIT 3
Residential Survey in Youngstown

Hello, my name is _____ with _____, a research firm based in _____. We are conducting a brief survey for a local university professor looking at the impact of information and market factors on residential moving decisions among people of certain occupations. Are you or any adult in your household employed as a municipal worker? All responses are confidential, and your answers cannot not be traced back to you. It will take about 5 minutes.

Will you participate? Y/N___ No municipal worker present___

First, I would like to read some examples of factors that people might consider in making a decision to move to another home. Using a scale of -3 to +3, where -3 represents an important negative factor, 0 is neutral or not important, and +3 represents a very important positive factor, please tell me how important each factor would be to you in making a decision about purchasing a home.

- _____ 1a. Quality of public schools
- _____ 1b. Property taxes
- _____ 1c. Presence of environmental problems for the property
- _____ 1d. Requirement to live in the same city where you work
- _____ 1e. Quality of the house
- _____ 1f. Access to public transportation
- _____ 1g. Neighborhood shopping nearby
- _____ 1h. Natural beauty/views

2a. Are there any other factors that you would rate a +3 or -3? (what?) _____

2b. Which of these factors is the most important to you?? (Including any you may have mentioned) _____

2c. Which would be second most important? _____

2d. Which would be third most important? _____

3. Do you currently own or rent your home? _____

4. What year did you move to your current home? (year) _____

5. What year did you start working at your current employer? (year) _____

6a. Some cities require that their employees live in the city where they work. Does this apply in your city? (Yes/No) _____

6b. How important was this city residency requirement in the selection of your current neighborhood and home?

- Very important
 Somewhat important
 Not very important
 Not important
 Does not apply to me

6c. If there was not a city residency requirement at the time you accepted your job, would you have chosen to live in a home outside the city where you now live?

- Yes
 No
 No residency requirement was in force when I became employed ("grandfathered")
 Does not apply to me

7. If the current city residency requirement were removed, and you could keep your job and live in any city you wished, you could consider moving outside the city you now live in? If so, which of the following is the most likely outcome?

- I/we would not move out of the city we now live in
 I/we would move out of the city within one year
 Move out within 2 years
 Move out within 3 years
 Move out within 4-7 years
 Would move out when kids out of school
 Would move out when I/we retire
 Other (what?) _____

8. If you said you would move, where would you move to?

- Rest of Mahoning County
 Outside county
 Out of state
 Would not move

Thanks. We have just a few more quick questions about you.

9a. What part of town or neighborhood do you live in? (name) _____

9b. What city do you live in?? (name) _____

10. Your age:

Under 18 30-39 50-59 66+
 18-29 40-49 60-65

11. Your education:

Less than high school
 High school grad
 Some college/Associate's degree
 College grad
 Post-graduate

12. Number of persons in your household: (number) _____

13. Number of school age children (age 5-18) in household: (number) _____

14. Number of people employed full time (30+ hours/week) in household: (number)

15. Recent annual household income:

<input type="checkbox"/> Under \$25,000 per year	<input type="checkbox"/> \$55,001 to \$65,000
<input type="checkbox"/> \$25,001 to \$35,000	<input type="checkbox"/> \$65,001 to \$75,000
<input type="checkbox"/> \$35,001 to \$45,000	<input type="checkbox"/> \$75,001 to \$85,000
<input type="checkbox"/> \$45,001 to \$55,000	<input type="checkbox"/> Over \$85,000

16. What type of city department do you work in?

<input type="checkbox"/> Civil service	<input type="checkbox"/> Municipal court
<input type="checkbox"/> Finance	<input type="checkbox"/> Parks
<input type="checkbox"/> Fire	<input type="checkbox"/> Planning/community development
<input type="checkbox"/> Health	<input type="checkbox"/> Police
<input type="checkbox"/> Law	<input type="checkbox"/> Public works
<input type="checkbox"/> Mayor/council	<input type="checkbox"/> Water
<input type="checkbox"/> Model cities/urban renewal	<input type="checkbox"/> Other (what?): _____

17. Employment status (more than one OK):

Full-time
 Part-time/seasonal
 Appointed

18. Gender: Male Female

19. Ethnicity/Race: _____

20. Home Zip code _____

21a. Value of your present house, if you are a homeowner (\$ value estimate): _____

21b. If not a homeowner, monthly rent (\$/month): _____

Thank you very much for your time.

Exhibit 6

THE LAW OF MUNICIPAL CORPORATIONS

THIRD EDITION

EUGENE McQUILLIN

2002 REVISED VOLUME

By the Publisher's Editorial Staff

VOLUME 16A

Cite as: *McQuillin Mun Corp* § — (3rd Ed)



WEST GROUP

A THOMSON COMPANY

COPYRIGHT © 1904, 1911-1913, 1921, 1928, 1937

BY EUGENE McQUILLIN

COPYRIGHT © 1939-1941, 1943-1945, 1947, 1950, 1952-1961, 1963-1991

BY CALLAGHAN & COMPANY

ALL RIGHTS RESERVED

COPYRIGHT © 1992-1996 BY CLARK BOARDMAN CALLAGHAN,

A DIVISION OF THOMSON INFORMATION SERVICES, INC.

ALL RIGHTS RESERVED

COPYRIGHT © 1997-2002 WEST GROUP

ALL RIGHTS RESERVED

West Group has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. West Group is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1984.



Library of Congress Cataloging in Publication Data (Revised)

McQuillin, Eugene, 1860-1937.

The law of municipal corporations.

Published 1911-13 under title: A treatise on the law of municipal corporations.
Kept up-to-date by cumulative pocket supplements and revised vols.

I. Municipal corporations—U.S.—Digests. I. Nichols, Clark Asahel, 1875- ed. II. Callaghan and Company. III. Title.

KF5305.M34 342'.73'09 49-3779

Prefac

In this Municipal (municipal la more than e employees.

A large issues as the ularly the compensatio revision cov focusing on municipality

One into this volume employees' c dency requi ability to dic analysis is g and firefight parties and i context of b departments

Also, det of police offic

The new keeping the i prehensive n

as a result of their negligence.¹⁴ Firefighters injured in such an accident have not assumed the risk of being injured while riding on fire trucks as a condition of their employment.¹⁵

V. REGULATION OF CONDUCT

A. IN GENERAL

§ 45.32 Residency requirements.

Generally, where there is authority to enact continuous residency requirements for police officers and firefighters,¹ such regulations are valid.² The authority to enact a residency requirement may be

¹⁴ Kan. Jackson v. Kansas City, 235 Kan 278, 680 P2d 877.

¹⁵ Kan. Jackson v. Kansas City, 235 Kan 278, 680 P2d 877.

[Section 45.32]

¹ U.S. Kiel v. City of Kenosha, 235 F3d 814 (CA7 2000).

Ala. Johnson v. State, 132 Ala 43, 31 So 493.

Cal. Marabuto v. Emeryville, 183 Cal App 2d 406, 6 Cal Rptr 690 (power of city council to enact rule upheld).

Conn. A city is not estopped from imposing by means of a collective bargaining agreement a residency requirement upon police officers even though it has failed for more than 40 years to enforce a similar requirement of a city ordinance applicable to all municipal employees. Carofano v. Bridgeport, 196 Conn 623, 495 A2d 1011.

Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

Minn. Berg v. Minneapolis, 274 Minn 277, 143 NW2d 200.

N.J. Kennedy v. Newark, 29 NJ 178, 148 A2d 473.

Ohio. Quigley v. Blanchester, 16 Ohio App 2d 104, 242 NE2d 589.

Pa. Gagliardi's Appeal, 401 Pa 141, 163 A2d 418.

W. Va. Morgan v. City of Wheeling, 205 W Va 34, 516 SE2d 48 (1999).

² U.S. Massachusetts Board of Retirement v. Murgia, 427 US 307, 49 L Ed 2d 520, 96 S Ct 2562; Hameetman v. Chicago, 776 F2d 636 (CA7); Kansas City, Kansas Fraternal Order of Police, Lodge No. 4 v. Kansas City, 620 F Supp 752 (D Kan) (sustaining facial validity of ordinance as to procedural due process).

Conn. Carofano v. Bridgeport, 196 Conn 623, 495 A2d 1011.

Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

Ind. Fletcher v. Town of Highland, 461 NE2d 147 (Ind App).

Mass. Mulrain v. Board of Selectmen of Leicester, 20 Mass App 950, 479 NE2d 745.

Minn. Berg v. Minneapolis, 274 Minn 277, 143 NW2d 200.

N.H. Seabrook Police Ass'n v. Town of Seabrook, 138 NH 177, 635 A2d 1371 (1993).

N.Y. Statutes requiring city firefighters to reside within state while not requiring city firefighters to reside within city are constitutional. Winkler v. Spinnato, 134 AD2d 66, 523 NYS2d 530 (1987).

derived from the authority rules,³ or the power to qualifications,⁴ or from such authority, however statutes may specifically allow or guarantee empl

Pa. Appeal of Wallace Commw 539, 496 A2d 105 ough v. Pittsburg Civ Comm'n, 21 Pa Commw A2d 776.

R.I. Loiselle v. East P: 116 RI 585, 359 A2d 345.

Utah. Salt Lake City ers Local 1645 v. Salt Lak Utah 2d 115, 449 P2d 236 395 US 906.

W. Va. Morgan v. City ing, 205 W Va 34, 516 (1999).

Validity, construction : cation of enactments r requirement of residency near specified government condition of continued er for police officers or fire ALR4th 380.

³ Ga. Dixon v. City of Ga 212, 416 SE2d 279 (19

Ill. Harvey Firemen Harvey, 75 Ill 2d 358, 389 (power of civil service con enact rule in view of authority); Manion v. Kri App 2d 374, 264 NE2d 58

⁴ Cal. Marabuto v. 1 183 Cal App 2d 406, 6 Ca Minn. Berg v. Minne Minn 277, 143 NW2d 2

tive authority to impose restrictions on employee as part of employment te

Pa. Gagliardi's Appe 141, 163 A2d 418.

⁵ Mich. Detroit Poli Ass'n v. Detroit, 385 Mi NW2d 97, app dismd 405

ed in such an
while riding on

derived from the authority to impose departmental disciplinary rules,³ or the power to make rules governing public employment qualifications,⁴ or from the general police power.⁵ In the absence of such authority, however, a residency requirement is invalid.⁶ State statutes may specifically prohibit local residency requirements⁷ or allow or guarantee employees the right to live within a certain area.⁸

Pa. Appeal of Wallace, 90 Pa Commw 539, 496 A2d 102; McDonough v. Pittsburg Civil Serv. Comm'n, 21 Pa Commw 322, 345 A2d 776.

R.I. Loiselle v. East Providence, 116 RI 585, 359 A2d 345.

Utah. Salt Lake City Firefighters Local 1645 v. Salt Lake City, 22 Utah 2d 115, 449 P2d 239, cert den 395 US 906.

W. Va. Morgan v. City of Wheeling, 205 W Va 34, 516 SE2d 48 (1999).

Validity, construction and application of enactments relating to requirement of residency within or near specified governmental unit as condition of continued employment for police officers or firefighters, 4 ALR4th 380.

³ Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

Ill. Harvey Firemens Ass'n v. Harvey, 75 Ill 2d 358, 389 NE2d 151 (power of civil service commission to enact rule in view of statutory authority); Manion v. Kreml, 131 Ill App 2d 374, 264 NE2d 589.

⁴ Cal. Marabuto v. Emeryville, 183 Cal App 2d 406, 6 Cal Rptr 690.

Minn. Berg v. Minneapolis, 274 Minn 277, 143 NW2d 200 (legislative authority to impose reasonable restrictions on employees' activities as part of employment terms).

Pa. Gagliardi's Appeal, 401 Pa 141, 163 A2d 418.

⁵ Mich. Detroit Police Officers Ass'n v. Detroit, 385 Mich 519, 190 NW2d 97, app dismd 405 US 950, 31

L Ed 2d 227, 92 S Ct 1173 (power of council to enact rule under power to enact ordinances to promote general health, safety and welfare).

Ohio. Quigley v. Blanchester, 16 Ohio App 2d 104, 242 NE2d 589.

⁶ Cal. Lanam v. Civil Serv. Comm'n, 80 Cal App 3d 315, 145 Cal Rptr 590 (unreasonable regulation in excess of constitutional authority).

Ill. Wierenga v. Board of Firefighters & Police Commissioners of Cicero, 40 Ill App 3d 270, 352 NE2d 322 (discharge on basis of non-compliance improper since board lacked authority to enact rule).

⁷ Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992); Atlanta v. Myers, 240 Ga 261, 240 SE2d 60 (ordinance invalid as special law in conflict with general state statute).

N.J. Booth v. Township of Winslow, 193 NJ Super 637, 475 A2d 644 (statute prohibits municipality from making residency a condition of original employment for police officers).

N.Y. Ordinance was void where statute allowing enactment of residency requirement only as to police officers appointed after a certain date where officers had been appointed prior to statutory date. Hesselgrave v. King, 45 Misc 2d 256, 256 NYS2d 753.

⁸ Ind. Ordinance was invalid which required firefighters to live in city where statute was enacted covering every facet of employment of firefighters and only required that

ous residency
ch regulations
ement may be

r. City of Wheel-
, 516 SE2d 48

setts Board of
ia, 427 US 307,
96 S Ct 2562;
go, 776 F2d 636
Kansas Frater-
Lodge No. 4 v.
? Supp 752 (D
cial validity of
edural due pro-

v. Bridgeport,
2d 1011.

y of Perry, 262
'9 (1992).

Town of High-
(Ind App).

v. Board of
er, 20 Mass App

Minneapolis, 274
1200.

Police Ass'n v.
38 NH 177, 635

requiring city
le within state
city firefighters
y are constitu-
Spinnato, 134
1530 (1987).

However, a state statute does not always invalidate a local charter provision, ordinance or regulation governing continuous residency.⁹

As discussed elsewhere in this treatise with regard to municipal officers and employees in general,¹⁰ ordinances and rules and regulations requiring continuous residency within a city or circumscribed area may be unconstitutional if they violate equal protection¹¹ and due process of law,¹² impair contractual or vested rights,¹³ or the

they live within 15 miles of city's corporate limits. Board of Public Safety v. State, 180 Ind App 294, 388 NE2d 582.

⁹ Cal. Ector v. Torrence, 10 Cal 3d 129, 109 Cal Rptr 849, 514 P2d 433, cert den 415 US 935 (local charter provision valid).

N.C. Bland v. Wilmington, 278 NC 657, 180 SE2d 813 (local rule not invalidated by statute subsequently enacted).

¹⁰ See §§ 12.59.05, 12.59.10.

¹¹ U.S. Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013; Ahern v. Murphy, 457 F2d 363 (CA7).

Cal. Ector v. Torrence, 10 Cal 3d 129, 109 Cal Rptr 849, 514 P2d 433, cert den 415 US 935; Marabuto v. Emeryville, 183 Cal App 2d 406, 6 Cal Rptr 690 (refusal to enjoin city council from discharging police officers and firefighters for failure to comply with residency rule).

Iowa. The party attacking an ordinance on the basis of an equal protection violation has the burden to prove beyond a reasonable doubt that the violation exists. Bugely v. State, 464 NW2d 879 (Iowa 1991).

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995); White v. Winnfield Fire Dept., 384 So 2d 471 (La App) (dismissal invalid since regulation violative of equal protection).

Mich. Detroit Police Officers Ass'n v. Detroit, 385 Mich 519, 190

NW2d 97, app dismd 405 US 950, 31 L Ed 2d 227, 92 S Ct 1173.

Minn. Berg v. Minneapolis, 274 Minn 277, 143 NW2d 200 (refusal to restrain suspension of police officers).

Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss).

N.C. Maines v. Greensboro, 300 NC 126, 265 SE2d 155.

Tex. Jackson v. Firemen's & Policemen's Civil Serv. Comm'n of Galveston, 466 SW2d 412 (Tex Civ App).

¹² U.S. Hameetman v. Chicago, 776 F2d 636 (CA7) (no due process violation); Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013.

Where state's highest court has construed statute or ordinance in way that avoids potential constitutional defect, that construction is impliedly incorporated into the statute or ordinance. Kansas City Fraternal Order of Police, Lodge No. 4 v. Kansas City, 620 F Supp 752 (D Kan) (ordinance not facially invalid).

Cal. International Ass'n of Firefighters AFL-CIO Local 55 v. San Leandro, 181 Cal App 3d 179, 229 Cal Rptr 238 (collective bargaining agreement in connection with residency requirement not precluding challenge to reasonableness of residency requirement).

right to t
firefighter
guishing c
between s
advanced.
rational r

La. Pol
v. New Or
1995).

Mich.
ants & Ser
Mich App
(enforceme
of due proc
Ohio.

Youngstov
49 Ohio A
252, 360
ruled, cer
violation c
Blanchest
Ohio Op 2
due proces

¹³ U.S.
ees, 561
1013; Kar
of Police, l
620 F Sup
tutional b

Miss.
Local 184
767 (Miss
Ohio.

Youngsto
49 Ohio
252, 360
ruled, cer
2d 748, s
impaired

¹⁴ U.S
phia Civ
645, 471
Andre v.
48, cert c

Jackson,
¹⁵ U.S
235 F3d

right to travel.¹⁴ However, the treatment of police officers and firefighters as a distinct class is valid based upon natural distinguishing characteristics.¹⁵ Further, there is a rational relationship between such rules and the governmental objectives sought to be advanced.¹⁶ Generally, the courts have found these rules to bear a rational relationship to governmental objectives such as the need to

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

Mich. Detroit Police Lieutenants & Sergeants Ass'n v. Detroit, 56 Mich App 617, 224 NW2d 728 (enforcement of ordinance violation of due process under circumstances).

Ohio. Fraternal Order of Police Youngstown Lodge No. 28 v. Hunter, 49 Ohio App 2d 185, 3 Ohio Op 3d 252, 360 NE2d 708, motion overruled, cert den 424 US 977 (rule violation of due process); Quigley v. Blanchester, 16 Ohio App 2d 104, 45 Ohio Op 2d 280, 242 NE2d 589 (no due process violation).

¹³ U.S. Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013; Kansas City Fraternal Order of Police, Lodge No. 4 v. Kansas City, 620 F Supp 752 (D Kan) (no constitutional impairment of contract).

Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss).

Ohio. Fraternal Order of Police Youngstown Lodge No. 28 v. Hunter, 49 Ohio App 2d 185, 3 Ohio Op 3d 252, 360 NE2d 708, motion overruled, cert den 424 US 977, 47 L Ed 2d 748, 96 S Ct 1484 (vested rights impaired).

¹⁴ U.S. McCarthy v. Philadelphia Civil Serv. Comm'n, 424 US 645, 47 L Ed 2d 866, 96 S Ct 1154; Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013; Wright v. Jackson, 506 F2d 900 (CA5).

¹⁵ U.S. Kiel v. City of Kenosha, 235 F3d 814 (CA7 2000).

Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

Mich. Detroit Police Officers Ass'n v. Detroit, 385 Mich 519, 190 NW2d 97, app dismd 405 US 950, 31 L Ed 2d 227, 92 S Ct 1173; Musto v. Redford Tp., 137 Mich App 30, 357 NW2d 791 (preemployment local residency requirement unconstitutional).

N.H. Seabrook Police Ass'n v. Town of Seabrook, 138 NH 177, 635 A2d 1371 (1993).

¹⁶ U.S. Kiel v. City of Kenosha, 235 F3d 814 (CA7 2000); Wright v. Jackson, 506 F2d 900 (CA5) (rule rationally related to aims sought); Ahern v. Murphy, 457 F2d 363 (CA7) (police residency requirement valid on basis of application of the rational relationship test); Newark Branch, N.A.A.C.P. v. Township of West Orange New Jersey, 786 F Supp 408 (D NJ 1992) (township's interest in having firefighters to be able to respond quickly in emergency situations).

Cal. Ector v. Torrence, 10 Cal 3d 129, 109 Cal Rptr 849, 514 P2d 433, cert den 415 US 935.

Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

Iowa. Clinton Police Dept. Bargaining Unit v. City of Clinton, 464 NW2d 875 (Iowa 1991), citing this treatise.

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995); White v. Winnfield Fire Dept., 384 So 2d 471 (La App) (rule invalid as no rational relationship

maintain a police and fire department capable of providing the maximum amount of protection to its citizens and their property.¹⁷ Residency requirements are considered to further the objective of having public safety personnel nearby and able to quickly respond during emergencies or while off duty on short notice.¹⁸ Further, continuous residency requirements are believed to be a reasonable means to promote a stable and diverse urban population¹⁹ and as a means to enhance the performance of employees by giving them an

between rule and objectives sought to be advanced).

Mich. Detroit Police Officers Ass'n v. Detroit, 385 Mich 519, 190 NW2d 97, app dismd 405 US 950, 31 L Ed 2d 227, 92 S Ct 1173.

¹⁷ **U.S.** Wright v. Jackson, 506 F2d 900 (CA5); Newark Branch, N.A.A.C.P. v. Township of West Orange New Jersey, 786 F Supp 408 (D NJ 1992) (government interest could have been met through means other than residency requirements).

Cal. Ector v. Torrence, 10 Cal 3d 129, 109 Cal Rptr 849, 514 P2d 433, cert den 415 US 935; Marabuto v. Emeryville, 183 Cal App 2d 406, 6 Cal Rptr 690.

Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

Iowa. Bugely v. State, 464 NW2d 879 (Iowa 1991), citing this treatise.

Minn. Berg v. Minneapolis, 274 Minn 277, 143 NW2d 200.

Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss) (valid exercise of police power in ordinance relating to public safety).

Tex. Jackson v. Firemen's & Policemen's Civil Serv. Comm'n of Galveston, 466 SW2d 412 (Tex Civ App).

¹⁸ **U.S.** Newark Branch, N.A.A.C.P. v. Township of West Orange New Jersey, 786 F Supp 408 (D NJ 1992) (government interest

could have been met through means other than residency requirements).

Cal. Ector v. Torrence, 10 Cal 3d 129, 109 Cal Rptr 849, 514 P2d 433, cert den 415 US 935; Marabuto v. Emeryville, 183 Cal App 2d 406, 6 Cal Rptr 690.

Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

La. Dismissal of firefighter was not "for cause" since regulation was invalid as there was no rational relationship between where time off was spent and efficiency of department since off-duty firefighters were not subject to call and had no duty to answer fire calls. White v. Winnfield Fire Dept., 384 So 2d 471 (La App).

Mass. Doris v. Police Com'r of Boston, 374 Mass 443, 373 NE2d 944 (purpose of statute to ensure quick mobilization of personnel in times of need).

Minn. Berg v. Minneapolis, 274 Minn 277, 143 NW2d 200.

Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss).

Ohio. Quigley v. Blanchester, 16 Ohio App 2d 104, 45 Ohio Op 2d 280, 242 NE2d 589.

¹⁹ **Cal.** Ector v. Torrence, 10 Cal 3d 129, 109 Cal Rptr 849, 514 P2d 433, cert den 415 US 935.

Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss).

inter
Evo
requi
ing pu
city i
emer
ment
throu

In
of a s
invid
may
their
may l
to gra
Con
while
the n
classi
Wi
or int
of du

20 I
235 F
Cal
129, 1
cert d
Mi
Minn
21 C
262 G
22 I
235 F
23 I
809 F
Ga.
Ga 21
24 I
809 F
La.
v. Ne
1995)
not in
agree:

interest in the community in which they serve.²⁰

Even in the face of a statute prohibiting the municipality from requiring residency with the corporate limits, an ordinance requiring public safety employees to live within a certain distance from the city is legitimate in order to assure a prompt response in times of emergency.²¹ Other justifications for imposing a residency requirement include improving the city's tax base and providing services through more revenue which benefitted city and county residents.²²

In respect to equal protection, legislation may address one aspect of a situation at a time as long as classifications are not based on invidious discrimination.²³ Thus, police officers and firefighters may be exempt from residency requirements due to provisions in their collective bargaining agreements, or residency requirements may be based on the length of employment as a constitutional means to gradually achieve a work force that resides in the municipality.²⁴

Conversely, they may be required to live within a certain area while other city employees are not subject to this requirement.²⁵ If the municipality can articulate a legitimate state purpose for the classification, then the disparate treatment will be allowed.²⁶

With respect to due process claims, in the absence of a vested right or interest,²⁷ a continuous residency requirement is not a violation of due process.²⁸ For example, the fact that a prior ordinance

²⁰ U.S. Kiel v. City of Kenosha, 235 F3d 814 (CA7 2000).

Cal. Ector v. Torrence, 10 Cal 3d 129, 109 Cal Rptr 849, 514 P2d 433, cert den 415 US 935.

Minn. Berg v. Minneapolis, 274 Minn 277, 143 NW2d 200.

²¹ Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

²² U.S. Kiel v. City of Kenosha, 235 F3d 814 (CA7 2000).

²³ U.S. Simien v. San Antonio, 809 F2d 255 (CA5).

Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

²⁴ U.S. Simien v. San Antonio, 809 F2d 255 (CA5).

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995) (city domicile ordinance did not infringe collective bargaining agreement).

²⁵ Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

²⁶ Ga. Dixon v. City of Perry, 262 Ga 212, 416 SE2d 279 (1992).

²⁷ Mich. Detroit Police Lieutenants & Sergeants Ass'n v. Detroit, 56 Mich App 617, 224 NW2d 728 (restraining enforcement of ordinance).

Ohio. Fraternal Order of Police Youngstown Lodge No. 28 v. Hunter, 49 Ohio App 2d 185, 3 Ohio Op 3d 252, 360 NE2d 708 (motion overruled), cert den 424 US 977 (rule applied retroactively void).

²⁸ U.S. Hameetman v. Chicago, 776 F2d 636 (CA7); Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013.

Conn. Carofano v. Bridgeport, 196 Conn 623, 495 A2d 1011.

allowed the hiring of nonresidents if no qualified resident applied and the fact that previously the municipality allowed its employees to reside outside of its boundaries does not create a preexisting, vested contractual right in the employees to live wherever they chose.²⁹ On the other hand, where there is a vested right or interest, a continuous residency rule or law,³⁰ or its application in a particular situation,³¹ may violate due process. The rule may be invalid where it retroactively applies to employees living outside of the designated area at the time of enactment,³² at least in the absence of a provision allowing a reasonable time to comply with the requirements.³³ Even a valid ordinance may be unconstitutional as applied where the enforcement of the ordinance is unreasonable under the circumstances.³⁴ Further, a municipality cannot act arbitrarily and

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

Ohio. Quigley v. Blanchester, 16 Ohio App 2d 104, 45 Ohio Op 2d 280, 242 NE2d 589.

Wis. Eastman v. Madison, 117 Wis 2d 106, 342 NW2d 764 (Ct App).

²⁹ U.S. Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013 (prior ordinance not expressly authorizing employees to live outside village).

³⁰ Ohio. Fraternal Order of Police Youngstown Lodge No. 28 v. Hunter, 49 Ohio App 2d 185, 3 Ohio Op 3d 252, 360 NE2d 708 (motion overruled), cert den 424 US 977.

³¹ Mich. Detroit Police Lieutenants & Sergeants Ass'n v. Detroit, 56 Mich App 617, 224 NW2d 728 (rule invalid as applied).

³² Ohio. Fraternal Order of Police Youngstown Lodge No. 28 v. Hunter, 49 Ohio App 2d 185, 3 Ohio Op 3d 252, 360 NE2d 708 (motion overruled), cert den 424 US 977, 47 L Ed 2d 748, 96 S Ct 1484.

Pa. An amended residency requirement for "applicants" to the police force was inapplicable to a police officer where the amendment

became effective after the date the officer was appointed to the force even though the officer was not sworn in until after the effective date, since the swearing in was nothing more than a ministerial act formalizing the officer's appointment. Township of Haverford v. Hawley, 97 Pa Commw 329, 509 A2d 937.

³³ Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss) (ordinance valid with time provision for compliance).

³⁴ U.S. See Hameetman v. Chicago, 776 F2d 636 (CA7) (recognizing possibility of unconstitutional application).

See Kansas City Fraternal Order of Police, Lodge No. 4 v. Kansas City, 620 F Supp 752 (D Kan) (holding going only to facial constitutionality of ordinance and not its application).

Cal. International Ass'n of Firefighters AFL-CIO Local 55 v. San Leandro, 181 Cal App 3d 179, 229 Cal Rptr 238 (residency requirement not addressing travel time not unconstitutional where reasonable and not arbitrary).

Mich. Detroit Police Lieutenants & Sergeants Ass'n v. Detroit, 56

capriciously by wa in another.³⁵

City employee d only certain nond condition of empl employees from th all employees wh date as long as th dency requiremen but also to promot

Generally, court ordinances and r the impairment of to travel.⁴⁰ Ther there is no vested ever, where a ve invalid on this g

Mich App 617, 2 (restraining enfor nance where officer written waivers to prior to enactment)

³⁵ Ill. Lewis v. App 3d 1020, 505 N

³⁶ La. Police A ans v. New Orlean (La 1995).

³⁷ La. Police A ans v. New Orlean (La 1995).

³⁸ La. Police A ans v. New Orlean (La 1995).

³⁹ U.S. Andre ees, 561 F2d 48, 1013.

La. Police Ass' v. New Orleans, 6 1995).

Miss. Hattiesl Local 184 v. Hatti 767 (Miss) (no imp tion of contract).

⁴⁰ U.S. McCa: phia Civil Serv.

d resident applied
wed its employees
ate a preexisting,
ve wherever they
d right or interest,
ation in a particu-
le may be invalid
outside of the des-
in the absence of a
with the require-
tutional as applied
sonable under the
act arbitrarily and

e after the date the
ointed to the force
he officer was not
after the effective
e swearing in was
an a ministerial act
e officer's appoint-
ip of Haverford v.
ommw 329, 509 A2d

ttiesburg Firefight-
Hattiesburg, 263 So
rdinance valid with
or compliance).

Hameestman v. Chi-
F2d 636 (CA7)
ssibility of unconsti-
tion).

ity Fraternal Order
No. 4 v. Kansas City,
2 (D Kan) (holding
cial constitutionality
d not its application).
ational Ass'n of
L-CIO Local 55 v.
81 Cal App 3d 179,
8 (residency require-
ssing travel time not
d where reasonable
ry).

oit Police Lieuten-
s Ass'n v. Detroit, 56

capriciously by waiving residency requirements in one case and not in another.³⁵

City employee domicile ordinances will be invalid if they require only certain nondomiciliary employees to move into the city as a condition of employment while exempting other nondomiciliary employees from this requirement.³⁶ However, it is valid to exempt all employees who were domiciled outside of the city on a certain date as long as they maintain the same outside domicile.³⁷ Residency requirements may apply not only to municipal employment but also to promotions within city police departments.³⁸

Generally, courts have rejected claims that continuous residency ordinances and rules violate the constitutional prohibition against the impairment of contractual obligations³⁹ or a constitutional right to travel.⁴⁰ There is no impairment of contractual rights where there is no vested right to live outside of the required area.⁴¹ However, where a vested contractual right is found, the rule will be invalid on this ground.⁴² As to the right to travel, the Supreme

Mich App 617, 224 NW2d 728 (restraining enforcement of ordinance where officer having obtained written waivers to its requirements prior to enactment).

³⁵ Ill. Lewis v. Hayes, 152 Ill App 3d 1020, 505 NE2d 408.

³⁶ La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

³⁷ La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

³⁸ La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

³⁹ U.S. Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013.

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss) (no impairment of obligation of contract).

⁴⁰ U.S. McCarthy v. Philadelphia Civil Serv. Comm'n, 424 US

645, 47 L Ed 2d 366, 96 S Ct 1154; Andre v. Board of Trustees, 561 F2d 48 (CA7), cert den 434 US 1013; Wright v. Jackson, 506 F2d 900 (CA5).

Conn. Carofano v. Bridgeport, 196 Conn 623, 495 A2d 1011.

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

Mich. Musto v. Redford Tp., 137 Mich App 30, 357 NW2d 791.

N.H. Seabrook Police Ass'n v. Town of Seabrook, 138 NH 177, 635 A2d 1371 (1993).

N.Y. Winkler v. Spinnato, 134 AD2d 66, 528 NYS2d 530 (1987).

⁴¹ U.S. Andre v. Board of Trustees, 561 F2d 48, cert den 434 US 1013.

La. Police Ass'n of New Orleans v. New Orleans, 649 So 2d 951 (La 1995).

Miss. Hattiesburg Firefighters Local 184 v. Hattiesburg, 263 So 2d 767 (Miss).

⁴² Ohio. Fraternal Order of Police Youngstown Lodge No. 28 v.

Court has held that such a requirement does not affect the right to interstate travel or any corollary thereof.⁴³

There are numerous definitions as to what "residency" means within the context of a statute, ordinance or regulation requiring continuous residency as a requirement for continued employment. "Residence" has been defined as the place of one's domicile, i.e., the place where one usually eats, sleeps and maintains one's personal and household effects;⁴⁴ the place where a person is qualified to vote;⁴⁵ the place where a person has an extended, continual presence;⁴⁶ the place where an employee's house or other dwelling place is located;⁴⁷ or the place where an employee has a permanent home or abode.⁴⁸

Whether residence is maintained at the place claimed by the employee is a question of fact determined by the employee's intent as evidenced by the surrounding facts.⁴⁹ The courts consider a number

Hunter, 49 Ohio App 2d 185, 3 Ohio Op 3d 252, 360 NE2d 708 (motion overruled), cert den 424 US 977.

⁴³ U.S. *McCarthy v. Philadelphia Civil Serv. Comm'n*, 424 US 645, 47 L Ed 2d 366, 96 S Ct 1154; *Andre v. Board of Trustees*, 561 F2d 48, cert den 434 US 1013; *Wright v. Jackson*, 506 F2d 900 (CA5) (no constitutional right to intrastate travel).

⁴⁴ U.S. *Hameetman v. Chicago*, 776 F2d 636 (CA7).

Pa. McCarthy v. Philadelphia Civil Serv. Comm'n, 19 Pa Commw 383, 339 A2d 634 ("bona fide residence" meant domicile or legal residence as differentiated from mere residence); *Goetz v. Village of Zelenople*, 14 Pa Commw 639, 324 A2d 808 (rule as not precluding maintaining of vacation or second home).

⁴⁵ *Utah. State v. Shores*, 48 Utah 76, 157 P 225.

⁴⁶ *N.Y. Nigro v. Village of Alden*, 57 AD2d 695, 395 NYS2d 544; *Contento v. Kohinke*, 42 AD2d 1025, 348 NYS2d 392.

Wis. Eastman v. Madison, 117 Wis 2d 106, 342 NW2d 764 (Ct App).

⁴⁷ *Mass. Doris v. Police Com'r of Boston*, 374 Mass 443, 373 NE2d 944.

⁴⁸ *Ill. Miller v. Police Board of Chicago*, 38 Ill App 3d 894, 349 NE2d 544.

Mass. Mulrain v. Board of Selectmen of Leicester, 20 Mass App 950, 479 NE2d 745.

⁴⁹ U.S. *Hameetman v. Chicago*, 776 F2d 636 (CA7).

Ill. Miller v. Police Board of Chicago, 38 Ill App 3d 894, 349 NE2d 544.

La. Williamson v. Village of Basikin, 339 So 2d 474 (La App) (reversal of automatic vacancy of office of police chief on basis of nonresidency).

Where a municipal ordinance requires police officers to reside in the municipality, an officer may be permitted to maintain a residence in the city and a residence outside of the city and still satisfy the residency requirement; residence and domicile are not synonymous and a

of different facts employee resides ered for this pu property within or rents property dren live and wh separate residen

person may have n dence even thoug have only one do Department of Pol (La App).

Mich. Choike Mich App 703, 290

N.Y. Contento AD2d 1025, 348 N plus actions as evi

Pa. Hohman Comm'n of Phila Commw 426, 368 thy v. Philadel, Comm'n, 19 Pa (A2d 634.

⁵⁰ *Ill. Miller v Chicago, 38 Ill / NE2d 544 (police c*

Mich. Choike Mich App 703, 29 turning departme action for lack of e

N.Y. Nigro v. 57 AD2d 695, 395 tento v. Kohinke, 4 NYS2d 392.

Pa. Appeal o Commw 326, 426 Hohman v. Civil Philadelphia, 28 368 A2d 833 (Href v. Philadelphia Ci 19 Pa Commw 3 (firefighter).

⁵¹ *Ill. Miller v Chicago, 38 Ill / NE2d 544.*

Mich. Choike Mich App 703, 290

does not affect the right to what "residency" means or regulation requiring continued employment. of one's domicile, i.e., the maintains one's personal a person is qualified to extended, continual presence or other dwelling place e has a permanent home

e place claimed by the the employee's intent as courts consider a number

Eastman v. Madison, 117 16, 342 NW2d 764 (Ct App). s. Doris v. Police Com'r of 174 Mass 443, 373 NE2d

Miller v. Police Board of 38 Ill App 3d 894, 349

Mulrain v. Board of 1 of Leicester, 20 Mass App VE2d 745.

Hameetman v. Chicago, 36 (CA7).

Miller v. Police Board of Chi- ll App 3d 894, 349 NE2d

Williamson v. Village of Bas- 2d 474 (La App) (reversal atic vacancy of office of ef on basis of nonresi-

a municipal ordinance olice officers to reside in ipality, an officer may be to maintain a residence in id a residence outside of ad still satisfy the resi- rement; residence and e not synonymous and a

of different facts to determine the ultimate fact, namely, whether the employee resides within the required area. Among the facts considered for this purpose are: whether the employee owns or rents property within the prescribed area;⁵⁰ whether the employee owns or rents property elsewhere;⁵¹ where the person's spouse and children live and where the children attend school,⁵² and if there are separate residences, are there separate residences because of mari-

person may have more than one residence even though he or she can have only one domicile. Werner v. Department of Police, 435 So 2d 475 (La App).

Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58.

N.Y. Contento v. Kohinke, 42 AD2d 1025, 348 NYS2d 392 (intent plus actions as evidenced by facts).

Pa. Hohman v. Civil Serv. Comm'n of Philadelphia, 28 Pa Commw 426, 368 A2d 883; McCarthy v. Philadelphia Civil Serv. Comm'n, 19 Pa Commw 383, 339 A2d 634.

⁵⁰ Ill. Miller v. Police Board of Chicago, 38 Ill App 3d 894, 349 NE2d 544 (police officer).

Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58 (overturning departmental disciplinary action for lack of evidence).

N.Y. Nigro v. Village of Alden, 57 AD2d 695, 395 NYS2d 544; Contento v. Kohinke, 42 AD2d 1025, 348 NYS2d 392.

Pa. Appeal of Kriss, 57 Pa Commw 326, 426 A2d 1216 (1981); Hohman v. Civil Serv. Comm'n of Philadelphia, 28 Pa Commw 426, 368 A2d 883 (firefighter); McCarthy v. Philadelphia Civil Serv. Comm'n, 19 Pa Commw 383, 339 A2d 634 (firefighter).

⁵¹ Ill. Miller v. Police Board of Chicago, 38 Ill App 3d 894, 349 NE2d 544.

Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58 (insuf-

ficient evidence to sustain disciplinary action).

N.Y. Contento v. Kohinke, 42 AD2d 1025, 348 NYS2d 392.

Pa. Appeal of Kriss, 57 Pa Commw 326, 426 A2d 1216 (1981); Hohman v. Civil Serv. Comm'n of Philadelphia, 28 Pa Commw 426, 368 A2d 883; McCarthy v. Philadelphia Civil Serv. Comm'n, 19 Pa Commw 383, 339 A2d 634.

⁵² Ill. Miller v. Police Board of Chicago, 38 Ill App 3d 894, 349 NE2d 544 (wife and children living elsewhere).

Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58 (insufficient evidence even though shown that wife and children residing in suburban house owned by officer).

N.Y. Contento v. Kohinke, 42 AD2d 1025, 348 NYS2d 392 (wife and children residing at out-of-town location where majority of off-duty time spent).

Pa. Appeal of Kriss, 57 Pa Commw 326, 426 A2d 1216 (1981) (wife and children living in out-of-town residence); Hohman v. Civil Serv. Comm'n of Philadelphia, 28 Pa Commw 426, 368 A2d 883 (children attending school in out-of-town district where property located); McCarthy v. Philadelphia Civil Serv. Comm'n, 19 Pa Commw 383, 339 A2d 634 (wife and children residing elsewhere and school attendance in that area).

tal difficulties or divorce;⁵³ whether there are utilities maintained and used in the place claimed to be the person's residence;⁵⁴ the address used on tax returns;⁵⁵ the amount of time spent at each residence;⁵⁶ the place where one votes or uses as a voting address;⁵⁷ and where one's clothes and personal belongings are kept.⁵⁸ The burden of proving that the employee's claimed residence is not the employee's actual residence is on the charging authority.⁵⁹

Although most courts passing on the constitutionality of residency requirements impose a rational basis test,⁶⁰ some have imposed a

⁵³ Pa. Appeal of Kriss, 57 Pa Commw 326, 426 A2d 1216 (1981) (unsubstantiated and insufficient evidence of separation from wife); Hohman v. Civil Serv. Comm'n of Philadelphia, 28 Pa Commw 426, 368 A2d 883 (no evidence of maintenance of separate residences due to marital separation); McCarthy v. Philadelphia Civil Serv. Comm'n, 19 Pa Commw 383, 339 A2d 634 (marital relationship with wife continuing).

⁵⁴ Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58 (city's burden of proof not met where among other facts showing of phone installed at claimed in-town residence).

N.Y. Nigro v. Village of Alden, 57 AD2d 695, 395 NYS2d 544 (little or no use of utilities on premises).

⁵⁵ Pa. Nevitt v. Board of Supervisors, 32 Pa Commw 474, 379 A2d 1072 (use of address outside of prescribed area).

⁵⁶ Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58 (being seen leaving residence on eight occasions in morning insufficient to show officer domiciled there).

N.Y. Contento v. Kohinke, 42 AD2d 1025, 348 NYS2d 392 (majority of off-duty time spent at out-of-town residence with wife and children).

Pa. Hohman v. Civil Serv. Comm'n of Philadelphia, 28 Pa Commw 426, 368 A2d 883 (statement by officer of spending as much time as possible at out-of-town residence); McCarthy v. Philadelphia Civil Serv. Comm'n, 19 Pa Commw 383, 339 A2d 634 (as much time spent at out-of-town residence as at claimed in-town residence).

⁵⁷ Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58.

⁵⁸ Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58 (absence of evidence showing where officer slept and kept personal belongings).

⁵⁹ U.S. See Hameetman v. Chicago, 776 F2d 636 (CA7).

La. Werner v. Department of Police, 435 So 2d 475 (La App).

Mich. Choike v. Detroit, 94 Mich App 703, 290 NW2d 58 (overturning departmental action for lack of evidence).

⁶⁰ Cal. Ector v. City of Torrance, 10 Cal 3d 129, 109 Cal Rptr 2d 849, 514 P2d 433 (1973), cert den 415 US 935 (1974).

Conn. Carofano v. City of Bridgeport, 196 Conn 623, 495 A2d 1011 (1985).

Mich. Detroit Police Officers Ass'n v. City of Detroit, 385 Mich 519, 190 NW2d 97 (1971).

strict scruti

§ 45.33 Pe

It is well appearance valid so long mental int regulations wigs are re maintainin making its and advanc rational ju erty" intere have in his been taken earrings.⁶

⁶¹ U.S.] 338 F Supp N.H. Se Town of Sea A2d 1371 (1 Ohio. F v. Hunter, 4 NE2d 708 (977 (1976).

[Section 4 ¹ U.S. I US 238, 47] (regulation and wigs).

Mass.] Framingha 7 Mass App ² U.S. US 560, 4 1440.

La. Ma 549 (La Ap ³ U.S.

US 238, 4 1440; Rafi 903 F2d (off-duty m earrings v;

ilities maintained
s residence;⁵⁴ the
time spent at each
a voting address;⁵⁷
gs are kept.⁵⁸ The
residence is not the
uthority.⁵⁹
ionality of residency
me have imposed a

an v. Civil Serv.
Philadelphia, 28 Pa
368 A2d 883 (state-
r of spending as much
le at out-of-town resi-
rthy v. Philadelphia
mm'n, 19 Pa Commw
1 634 (as much time
f-town residence as at
wn residence).

Choike v. Detroit, 94
1, 290 NW2d 58.

Choike v. Detroit, 94
703, 290 NW2d 58
idence showing where
and kept personal

se Hameetman v. Chi-
1636 (CA7).

er v. Department of
2d 475 (La App).

oike v. Detroit, 94
3, 290 NW2d 58 (over-
rtmental action for lack

ctor v. City of Torrance,
9, 109 Cal Rptr 2d 849,
(1973), cert den 415 US

arofano v. City of
196 Conn 623, 495 A2d

etroit Police Officers
y of Detroit, 385 Mich
2d 97 (1971).

strict scrutiny test.⁶¹

§ 45.33 Personal appearance regulations.

It is well established that regulations governing the personal appearance and grooming of police officers¹ and firefighters² are valid so long as the regulations are rationally related to the governmental interest to be advanced.³ Thus, personal grooming regulations concerning hair length, facial hair and the wearing of wigs are reasonably related to a local government's desired aims of maintaining a similarity of appearance among its police officers, making its officers readily recognizable to members of the public, and advancing morale among members of the department.⁴ Such rational justifications overcome any Fourteenth Amendment "liberty" interest which an individual member of the police force might have in his or her personal appearance.⁵ A similar approach has been taken to validate a ban on off-duty male police officers wearing earrings.⁶

⁶¹ U.S. Krzewinski v. Kugler, 338 F Supp 482 (D NJ 1972).

N.H. Seabrook Police Ass'n v. Town of Seabrook, 138 NH 177, 635 A2d 1371 (1993).

Ohio. Fraternal Order of Police v. Hunter, 49 Ohio App 3d 185, 360 NE2d 708 (1975), cert den 424 US 977 (1976).

[Section 45.33]

¹ U.S. Kelley v. Johnson, 425 US 238, 47 L Ed 2d 708, 96 S Ct 1440 (regulation of hair length, facial hair and wigs).

Mass. Board of Selectmen of Framingham v. Civil Serv. Comm'n, 7 Mass App 398, 387 NE2d 1198.

² U.S. Quinn v. Muscare, 425 US 560, 48 L Ed 2d 165, 96 S Ct 1440.

La. Matter of Geiger, 337 So 2d 549 (La App).

³ U.S. Kelley v. Johnson, 425 US 238, 47 L Ed 2d 708, 96 S Ct 1440; Rathert v. Village of Pectone, 903 F2d 510 (CA7 1990) (ban on off-duty male police officers wearing earrings valid).

Applying stricter weight requirement to supervisory personnel was rationally related to goals of furthering respect for department in the community, setting positive role model, and enhancing pride and morale of employees. Johnson v. City of Tarpon Springs, 758 F Supp 1473 (MD Fla 1991).

La. Matter of Geiger, 337 So 2d 549 (La App) (fire department regulation governing style and length of moustaches and sideburns).

Mass. Board of Selectmen of Framingham v. Civil Serv. Comm'n, 7 Mass App 398, 387 NE2d 1198 (police regulation controlling hair style).

⁴ U.S. Kelley v. Johnson, 425 US 238, 47 L Ed 2d 708, 96 S Ct 1440.

⁵ U.S. Kelley v. Johnson, 425 US 238, 47 L Ed 2d 708, 96 S Ct 1440.

⁶ U.S. Rathert v. Village of Pectone, 903 F2d 510 (CA7 1990).

70 N.C. App. 438, 613 S.E.2d 259
625 S.E.2d 785 (2005).

Westminster, 56 P.3d 1193 (Colo. Ct.
02).

a. 122, 549 S.E.2d 341 (2001).

Wilson, 827 N.E.2d 44 (Ind. Ct. App.

o. 2d 41 (La. Ct. App. 5th Cir. 2003),
3).

, 2006 WL 721851 (Ill. App. Ct. 1st

o. 2d 41 (La. Ct. App. 5th Cir. 2003),
3).

sey, 834 So. 2d 687 (Miss. 2003).

F.3d 948 (7th Cir. 2003) (no substan-

8 F.3d 948 (7th Cir. 2003); Helseth v.
D), cert. denied, 122 S. Ct. 924, 151 L.

F.3d 867 (8th Cir. 2001), cert. denied,
U.S. 2002).

18 F.3d 948 (7th Cir. 2003); Helseth v.
1), cert. denied, 122 S. Ct. 924, 151 L.

standard applies to other types of
ce vehicles responding to

ME 118, 834 A.2d 928 (Me. 2003), cert.
4).

tor vehicles—Firefighters

Fire Dept. v. Hudson, 179 S.W.3d 695

V. REGULATION OF CONDUCT

A. IN GENERAL

§ 45.32 Residency requirements

n. 1.

U.S.—Kiel v. City of Kenosha, 236 F.3d 814 (7th Cir. 2000).

n. 2.

U.S.—Kiel v. City of Kenosha, 236 F.3d 814 (7th Cir. 2000).

n. 16.

U.S.—Kiel v. City of Kenosha, 236 F.3d 814 (7th Cir. 2000).

n. 23.

U.S.—Kiel v. City of Kenosha, 236 F.3d 814 (7th Cir. 2000).

n. 60.

U.S.—Kiel v. City of Kenosha, 236 F.3d 814 (7th Cir. 2000).

§ 45.34 Off-duty conduct

n. 1.

Iowa—Dolan v. Civil Service Com'n of City of Davenport, 634
N.W.2d 657 (Iowa 2001).

n. 5.

U.S.—Mercer v. City of Cedar Rapids, 308 F.3d 840 (8th Cir. 2002).

Iowa—Dolan v. Civil Service Com'n of City of Davenport, 634
N.W.2d 657 (Iowa 2001).

n. 6.

U.S.—Mercer v. City of Cedar Rapids, 308 F.3d 840 (8th Cir. 2002).

B. REGULATION OF SPEECH

§ 45.36 Generally

n. 1.

U.S.—Arndt v. Koby, 309 F.3d 1247 (10th Cir. 2002), cert. denied,
123 S. Ct. 1936, 155 L. Ed. 2d 850 (U.S. 2003).

Kessler v. City of Providence, 167 F. Supp. 2d 482 (D.R.I. 2001);
Carvalho v. Town of Westport, 140 F. Supp. 2d 95 (D. Mass. 2001).

n. 2.

U.S.—Tripp v. Cole, 425 F.3d 5, 23 I.E.R. Cas. (BNA) 820 (1st Cir.
2005); Kirby v. City Of Elizabeth City, North Carolina, 388 F.3d 440, 21
I.E.R. Cas. (BNA) 1826 (4th Cir. 2004), petition for cert. filed, 73 U.S.L.W.
3466 (U.S. Jan. 26, 2005); Roe v. City of San Diego, 356 F.3d 1108, 20
I.E.R. Cas. (BNA) 1569 (9th Cir. 2004). For an expanded analysis of this
case, see 22 McQuillin Mun. Law Rpt. 3:2 (2003); Arndt v. Koby, 309 F.3d
1247 (10th Cir. 2002), cert. denied, 123 S. Ct. 1936, 155 L. Ed. 2d 850
(U.S. 2003); Swartzwelder v. McNeilly, 297 F.3d 228 (3d Cir. 2002); Pap-
pas v. Giuliani, 290 F.3d 143 (2d Cir. 2002), cert. denied, 2003 WL 1869952
(U.S. 2003). For an expanded analysis of this case, see 20 McQuillin Mun.
Law Rptr. 7:8 (2002).

Exhibit 7

Municipal Management Series

Managing Fire and Rescue Services

A completely revised and updated
version of *Managing Fire Services*

Editors

Published
for the
ICMA University

Dennis Compton
Fire Chief
Mesa, Arizona

By the
International
City/County
Management
Association

John Granito
Fire and Public Safety Consultant
Professor Emeritus and
Retired Vice President
State University of New York



Municipal Management Series

Managing Fire and Rescue Services
Advanced Supervisory Practices
Effective Communication
The Effective Local Government Manager
Effective Supervisory Practices
Emergency Management
Local Government Police Management
Management of Local Public Works
Management Policies In Local Government Finance
Managing Human Resources: Local Government Cases
Managing Local Government: Cases In Decision Making
Managing Local Government Finance: Cases In Decision Making
Managing Small Cities and Counties
The Practice of Local Government Planning
The Practice of State and Regional Planning
Service Contracting: A Local Government Guide

Library of Congress Cataloging-In-Publication Data

Managing fire and rescue services / editors, Dennis Compton, John Granito.

p. cm.—(Municipal management series)

Includes bibliographical references and index.

(ISBN 0-87326-128-3 (hardcover : alk. paper)

1. Fire departments—Management. 2. Emergency medical services—Management. I. Compton, Dennis. II. Granito, John III. Series.

TH9145 .M253 2002

363.37'0068—dc21

2002008018

Copyright © 2002 by the International City/County Management Association, 777 N. Capitol Street, N.E., Washington, D.C. 20002. All rights reserved, including rights of reproduction and use in any form or by any means, including the making of copies by any photographic process or by any electronic or mechanical device, printed or written or oral, or recording for sound or visual reproduction, or for use in any knowledge or retrieval system or device, unless permission in writing is obtained from the copyright owner.

Printed in the United States of America

2009 2008 2007 2006 2005 2004 2003 2002

10 9 8 7 6 5 4 3 2 1

02-081
42810

and fire investigation. A number of city fire departments have made prevention bureaus responsible for public fire safety education and other special functions (such as nightclub inspections and special-event fire safety support). Another important aspect of the prevention bureau's responsibility is close coordination with community needs. As growth, urban renewal, and occupancy changes occur in commercial properties, fire safety needs must be addressed in a proactive, cooperative way through coordination with other city departments, developers, and prospective tenants. (Fire code enforcement is discussed at greater length later in this chapter in the section called "Fire Prevention.")

Other functions Other functions within fire departments may be designated divisions or sections within the organizational structure and may be placed under different bureaus, depending on local needs and good management practices in the given setting. These functions include, among others, training, research and planning, community services, disaster services, emergency preparedness (some fire departments have this function), information management, public information, employee relations, and internal affairs.

Beyond traditional approaches

In some communities, special circumstances (or a different approach to fire protection) have resulted in organizational structures that depart from or go beyond the more traditional approaches to organizing a fire department.

In Los Angeles County, for example, specialized services of considerable magnitude present a need for a different approach to fire department organization. The county fire department protects fifty-seven incorporated cities, many of which are contiguous to one another, as well as all the unincorporated areas of the county, including urban and wildland areas. Covering forty-four hundred square miles with traditional fire and paramedic services as well as helicopter-supported fire attack and air squad, dozer operations, ocean lifeguard services, and brushfire-fighting hand crews requires a departure from the norm.

A unique organizational structure has been implemented in the Los Angeles County Fire Department to address the diverse needs of the large geographic area it serves (see Figure 4-5). Emergency and nonemergency services have been divided among three regional operations bureaus. Each region is commanded by a deputy chief, who is accountable for all service delivery within that geographic region. (One region includes all ocean lifeguard services in addition to the other services.) The regional operations bureau chiefs and their support staff are housed within their respective regions, bringing executive management closer to the actual point of service delivery. Inherent in the structure are challenges related to communication, coordination, and continuity across regional lines as the operations bureaus fulfill the department's mission.

Deployment concepts

The fire department's organizational mission is to protect life and property from fire. Accordingly, the characteristics of fire influence virtually all aspects of the department: the location of fire stations, the vehicles and equipment used, and staffing practices.

When a fire has adequate fuel and oxygen, it grows larger and more intense very rapidly. In a private residence, for example, a curtain blown into the open flame of a candle can burn intensely enough for heat and smoke to spread incredibly quickly throughout the room and into the rest of the house. Within six minutes that room of origin and all its contents may be engulfed by flames. The point at which this occurs is known as "flashover," and once this point is reached, life inside the structure is in great peril because the fire's further spread is inevitable.

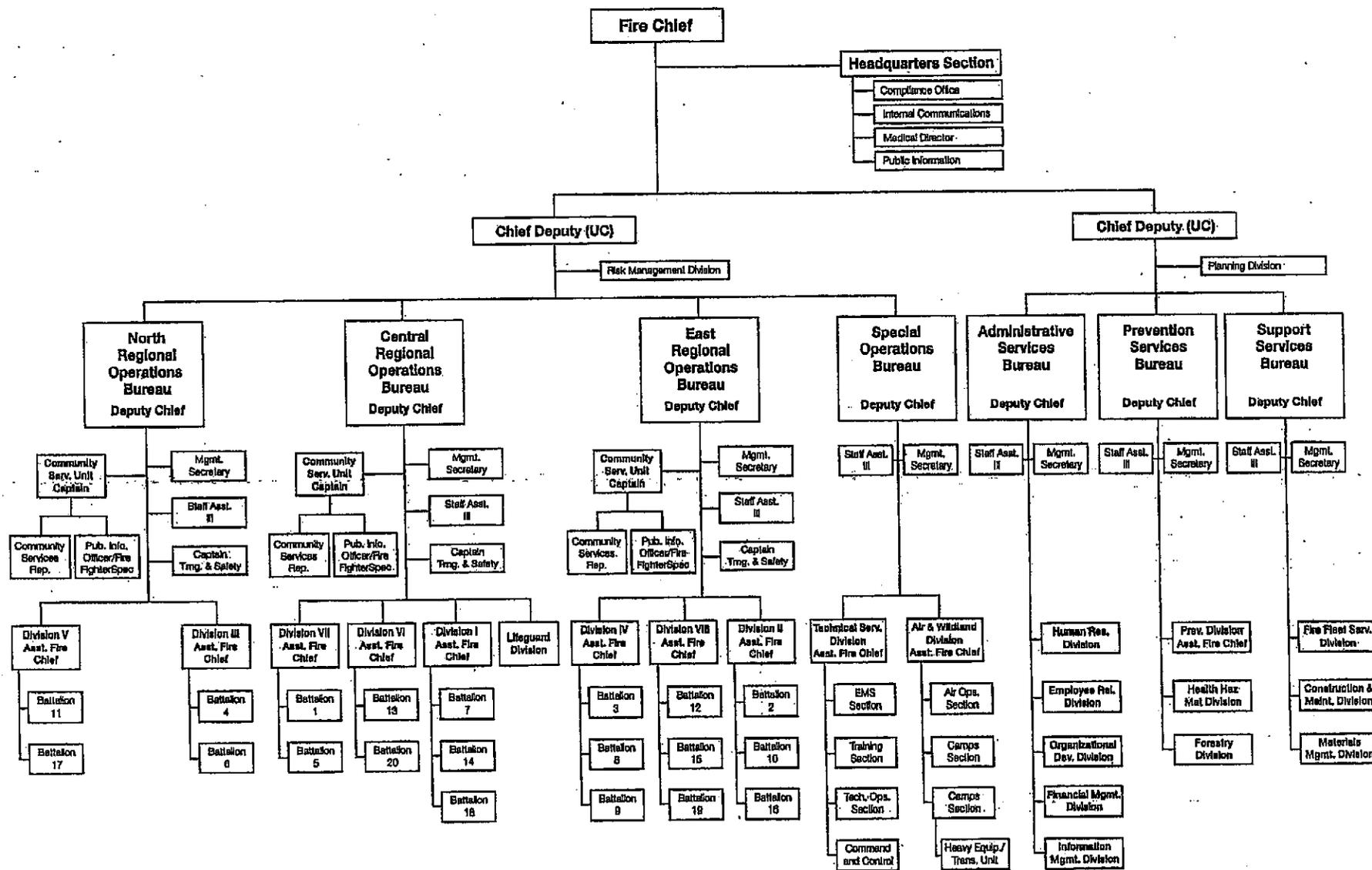
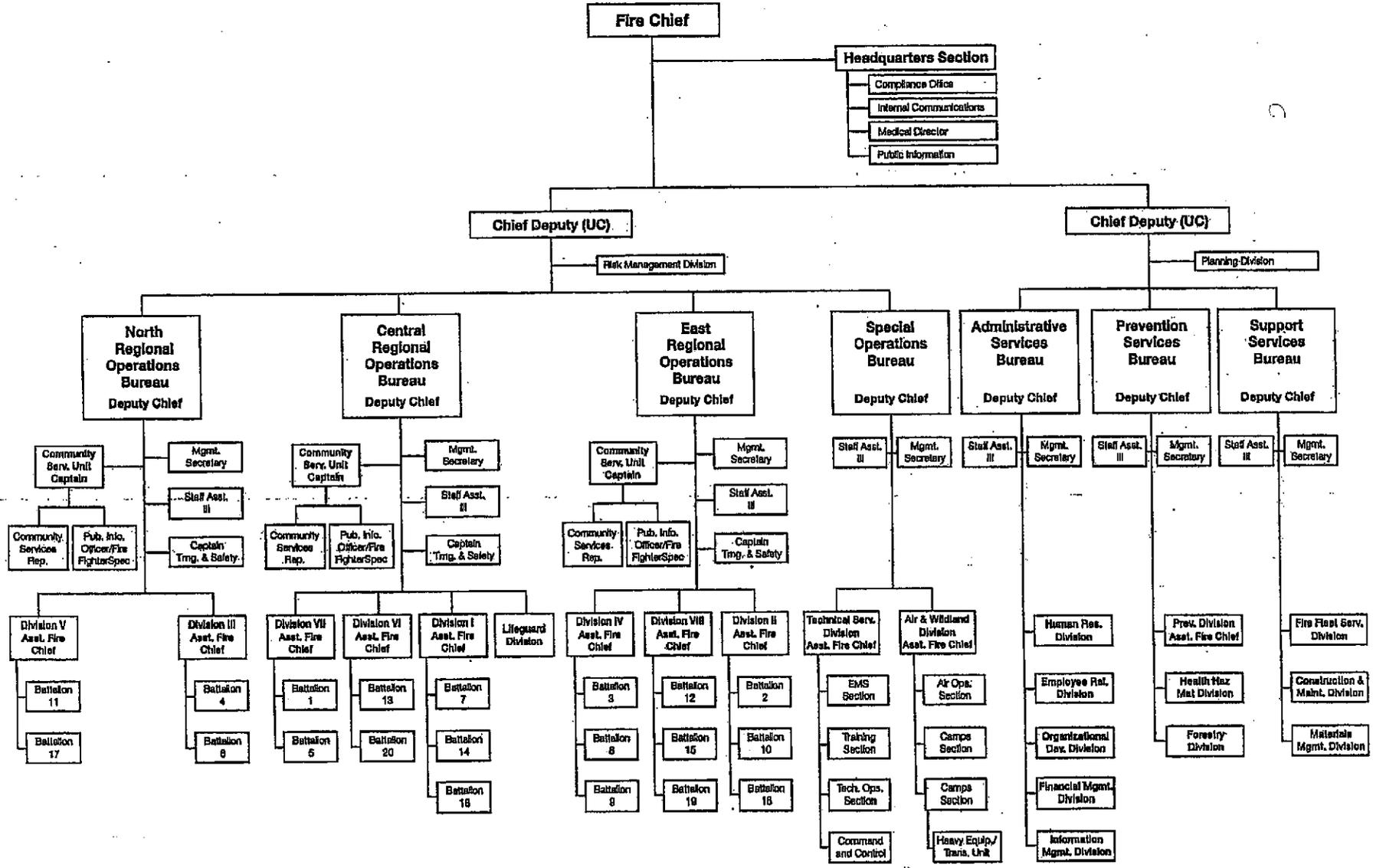


Figure 4-5 Los Angeles County Fire Department organizational chart.



Appendix 97

Figure 4-5 Los Angeles County Fire Department organizational chart.

This rapid growth and spread of fires involving ordinary combustibles has been well documented in laboratory tests, and it challenges firefighters over and over as they respond to the call. The critical difference between a small, easily controlled fire and a large fire that threatens to destroy an entire building is time. (Time is also a big factor in saving lives because once respiratory and cardiac functions cease, four to six minutes is as long as a human being can survive without intervention and resuscitation.)

Thus, response time for fire departments is a very important component for success in the main mission. As usually measured, response time counts the minutes and seconds from the moment an emergency call is received in the dispatch center until the emergency unit arrives at the location of the emergency. Given that it may take three-quarters of a minute or longer to process a call and dispatch responders, the reaction time of the firefighters and the driving or travel time become tremendously important. (Of course, the one thing that neither firefighters nor dispatch staff can control is the time elapsed between ignition of the fire, a citizen's discovery of the fire, and the subsequent call to 911. This is why response time is only one of several components critical to minimizing losses from fire. Prevention efforts, code enforcement, and public fire education are among the other critically important components.)

Locating fire stations

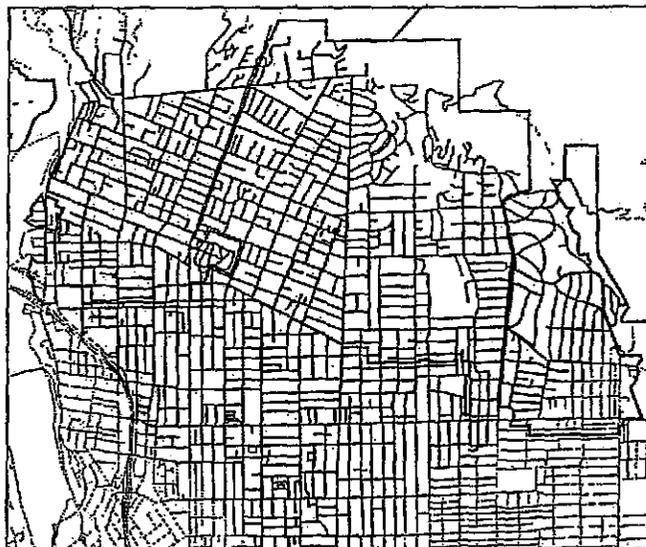
In a fire or medical emergency, excessive travel times may mean an increased risk to the public experiencing the emergency. Therefore, the basic deployment concept, or model, for a fire department calls for fire stations to be located to form an orderly pattern or network of stations from which emergency service is delivered in a timely manner. Each fire station is an integral part of the fire station network and serves as a base from which emergency fire units respond. The network as a whole seeks to optimize coverage with short travel distances, while giving special attention to natural and man-made barriers that can create response-time problems. Where such barriers to optimum response times exist, some areas may require more fire stations.

Fire station planning is therefore a critical component of managing local fire protection services. And because stations should last fifty years or more, location has a long-term effect on the community to be served. Accordingly, fire chiefs and local government managers perform an important community service if they thoroughly lay out the rationale for optimal fire station locations. Sometimes neighbors of a proposed fire station may object because of concerns about noise, fire vehicular traffic, and devaluation of property. Such concerns are generally not warranted, and once the station is operational, neighbors often learn that firefighters are good neighbors and valuable additions to the neighborhood.

Sound planning of fire station locations can be done in various ways. With the help of accurate historical response data and realistic computer modeling, factually based decisions can be made. Computerized programs are available, as are private consultants who specialize in such efforts. A computerized database of local streets, roads, and thoroughfares can help the fire department planning staff by simulating responses from a proposed fire station site along all streets at various average miles per hour. When completed, the "web of coverage" (as shown in Figure 4-6) provides an accurate visual projection of a station's coverage area, using computer-generated response times defined by actual street configurations. Obviously, the more realistic the average response speeds, the better the projected coverage area can be defined.

The decentralized network of fire stations constitutes the basic level of first-responder coverage for a community or a fire department jurisdiction. In large

Figure 4-6 "Web of coverage" for a Los Angeles County Fire Department station.



communities or jurisdictions where the risks are accentuated by high population densities and heavy traffic, departments usually have more fire stations, fire-fighters, and fire companies per thousand population than do departments in communities without such features.⁴ Excessively high demands for service, geographical barriers such as rivers and railroad rights-of-way, or major shifts in community infrastructure may require the reevaluation of station locations

Using computer software to analyze problems and identify solutions To see how a computer software program can make both problem analysis and solution-path identification easier, consider the following example of a project that involved more than forty fire departments that protect a very large county:

While parts of the county are urban, most of it is suburban and rural, and a good portion of it has no municipal water supply. Working with a consultant, county officials and fire department officers designed a plan to improve the ISO/CRS [Insurance Services Office/Community Rating System] public protection classification for structures that are located within five miles of a fire station but have no water main service.

The fire suppression rating schedule now credits the delivery of water to an incident, not just through a pressurized hydrant system, but also by tanker shuttle or relay and by drafting from certified sites. A department's ability to

deliver a sustained, specified fire flow for at least two hours may with certain detailed stipulations result in significant insurance savings.

"Using our computer program," says Mark Morse, vice president for Public Safety Programs at MMA Consulting Group, Inc., in Boston, "officials easily identified all structures within five road miles of an existing station, plus areas where a new or relocated station might be possible. Still using the computer, we then hypothetically redeployed existing tankers and portable tanks to key stations, taking into account the certified year-round drafting sites and hydrants already in place and the ISO-required fire flows."

In such situations, the computer reveals that a redeployment of existing resources among departments willing to engage in a detailed "functional consolidation" program may give property owners impressive savings. As Morse notes, "the beauty of the computer is that it enables us to play

and fire units. Sometimes budgetary constraints, downsizing, and the reengineering of city services may also affect station location.

Structure fires and labor-intensive emergencies will draw fire companies from more than one station because a single station rarely houses all the fire companies and personnel needed for such emergencies. Since most departments respond to structure fires with two or three engine companies and a ladder company (see the discussion of vehicles that follows), some fire stations in the network will house both an engine and a ladder company.

Vehicles and equipment

Regardless of its range of services, every fire department, large or small, relies on a fire engine, or pumper, to transport firefighters, hoses for firefighting, and tools that are essential at the scene of a reported fire. Fire engines have a fire pump that is used to increase pressure on water taken from fire hydrants or other sources so that powerful firefighting streams can be developed in fire hoses. Many engines also carry three hundred to five hundred gallons of water for use on small fires where a hydrant hookup is unnecessary. Most fire departments rely on the engine because of its versatility. With a trained crew, the engine company is versatile enough to handle—or at least begin to make a difference at—almost every fire emergency. In most communities, the engine company is supported by a truck company (a ladder truck with its crew). A quint vehicle, which is discussed below, can perform as an engine or as a ladder truck.

The ladder truck, specially designed for the purpose, carries more than 300

out this scenario long before a department has to agree to move a tanker, or buy large-diameter hose, or identify rural drafting sites that meet the specs."

GIS- [geographic information systems]-based computer analysis is the type of analysis most frequently discussed by departments undertaking a master plan, analyzing staffing, or locating or relocating a station. However, other tools are just as valuable.

Spreadsheet and data-based computer applications allow for a more thorough analysis than would have been thought possible twenty years ago. And as a result of this analysis, fire departments are often able to accurately measure their activities and service delivery or capacity, to reconsider the conventional wisdom, and to develop more appropriate strategies.

It is important in this era of cost-consciousness to be able to determine the true costs of services. How much

does the department's public education program cost? What is the price of enforcement? How much do volunteers cost? Valid cost data often provide the documentation fire service administrators need to make informed decisions or persuasive arguments to local legislators.

It is clear that fire departments expect sophisticated reasoning and justifications for major recommendations, especially when those recommendations have substantial cost implications. The use of advanced computer software programming greatly enhances a department's ability to analyze and understand program inputs and outgoing services.

Source: John A. Granito, "From Hoses to Online," in *Fire Services Today: Managing a Changing Role and Mission*, ed. Gerard J. Hoelmer (Washington, D.C.: International City/County Management Association, 1996), 226-227. Reprinted with minor adaptations by permission from *NFFPA Journal** 89 (January/February 1995) Copyright © 1995. National Fire Protection Association (NFPA), Quincy, MA 02269.

feet of different ladders of various lengths; some are extension ladders. Most often, the ladder truck also has a hydraulically operated aerial ladder that may be from 75 to 135 feet long. Aerial ladder vehicles are commonly found in urban areas and cities where building heights exceed three stories.³

When responding to structure fires, the engine company's personnel lay and advance hose lines for the purpose of confining and extinguishing the fire. Firefighters arriving on ladder trucks search for lost or trapped occupants, use specialized hand tools to gain entry into locked buildings, and place ladders to gain access to rooftops, where they cut holes to allow superheated fire gases and smoke to escape from the structure that is on fire. They may effect cross ventilation by opening windows and doors, taking advantage of prevailing breezes or of forced air introduced by mechanical blowers brought by the fire department.

All firefighters, whether they staff engine companies or truck companies, are trained in various aspects of firefighting to accomplish specific objectives at fires. These fire ground objectives are necessary for saving lives and protecting property (see sidebar on fire ground objectives). Therefore, in communities that may not have a ladder truck company, engine company members perform the tasks necessary for the particular incident.

To emphasize versatility, some departments use quints. A quint is a firefighting vehicle that can perform five important firefighting functions: it carries water, has a pump, is loaded with hose, carries many ladders, and has a hydraulically operated aerial ladder. With assistance from another unit at the scene, the quint can sometimes handle both engine and truck functions. The St. Louis Fire Department placed a quint in every fire station to reduce costs (by not having to have engines and trucks) and increase versatility (by having a quint respond from every station).

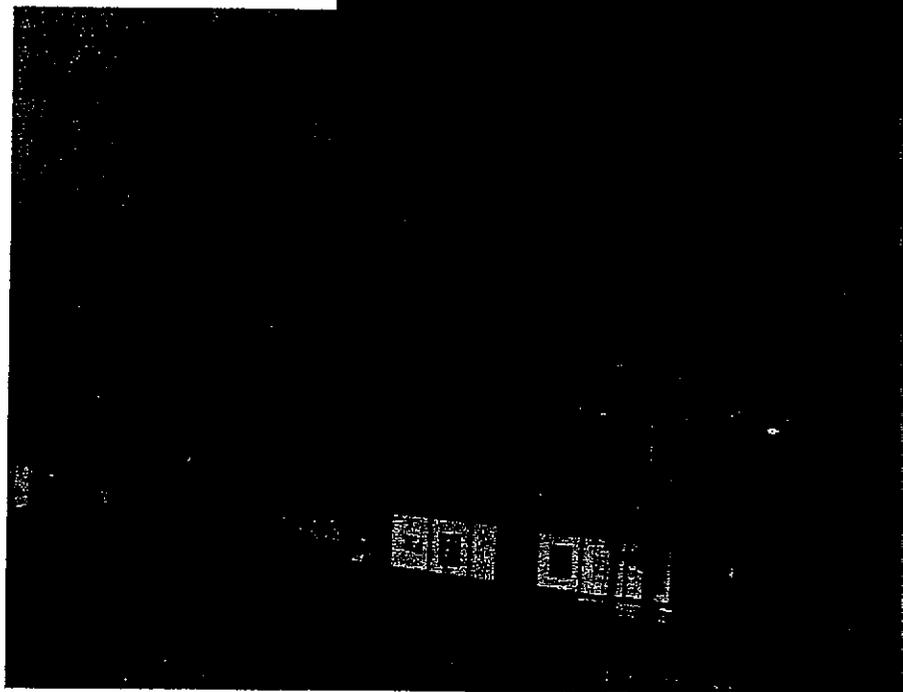
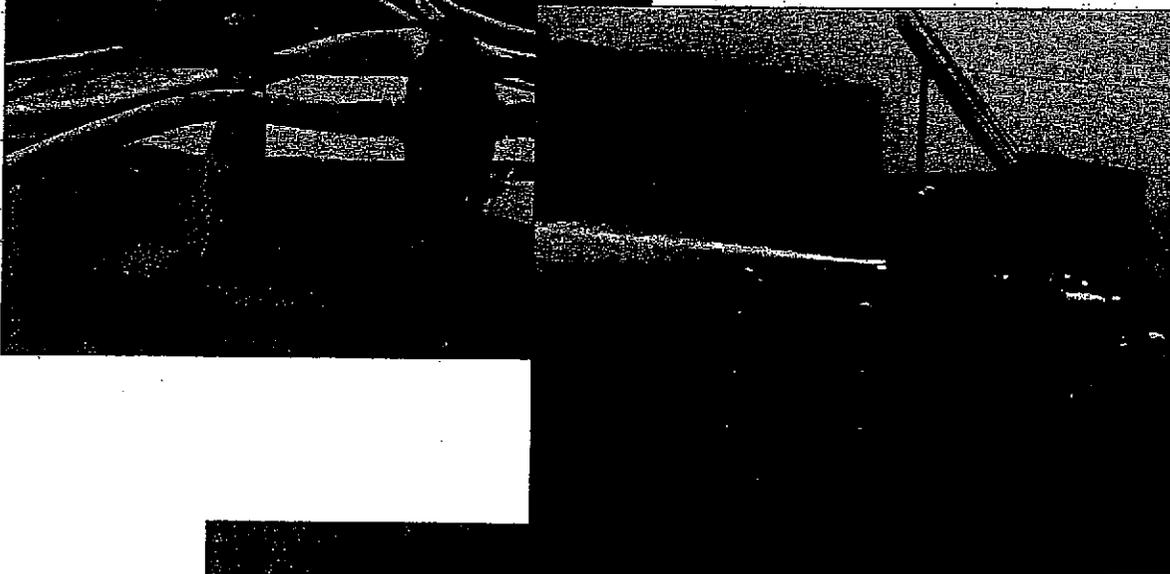
In addition to the basic firefighting engines and trucks, ancillary fire vehicles also respond to fires and other emergencies and are housed in fire stations, but

Fire ground objectives The specific goals to be accomplished at the scene of a fire (i.e., on the fire ground) are as follows:

1. *Rescue* is the highest-priority objective and encompasses all necessary fire ground commitments of firefighters to search for and remove victims endangered by fire.
 2. *Exposure protection* is the objective with the second-highest priority and encompasses all efforts to confine the fire to the building of origin if at all possible.
 3. *Confinement* is the fire ground objective of holding the fire to the smallest area, with emphasis on preventing the fire from traversing any other avenues.
 4. *Extinguishment* is the process of extinguishing the flames and cooling the fuels involved to below ignition temperature.
 5. *Ventilation* can be performed at any point in the firefighting effort and involves the planned, systematic removal of smoke, fire gases, and heat from the involved structure.
 6. *Salvage* (conservation of property) is defined as any actions taken to conserve property, including contents, from heat, smoke, and water.
 7. *Overhaul* ensures the complete extinguishment of the fire and the safety of the structure, and establishes at least a probable cause of the ignition of the fire.
-



Figure 4-7 Fire department vehicles and equipment: (Top left) Oklahoma City fire engine at hydrant. (Center) Oklahoma City firefighters operating the deck gun of a fire engine at a warehouse fire. (Bottom) Blackwell and Ponca City (Oklahoma) aerials operate streams at a major downtown fire.



in lesser numbers than pumpers or trucks. These specialized vehicles include HAZMAT units, rescue trucks, ambulances, battalion chief vehicles, and mobile command posts (see Figure 4-8 and the sidebar on specialized equipment).

Staffing fire units

Once a suitable network of fire stations is in place, fire departments use different levels of staffing on fire companies to balance cost with the need for an adequate number of fire units and firefighters for structure fires and other emergencies. Different staffing schemes prevail depending on budgetary considerations, actual fire frequency, and demand for such fire department corollary services as EMS. In fact, fire company staffing levels vary from department to department. They may be influenced not only by the factors just mentioned but also by population protected (which may be different from the census population, as explained in the next paragraph), population density, types of structures, and response distances; by response and workload data; or by local labor agreements. But although fire unit staffing levels vary from department to de-

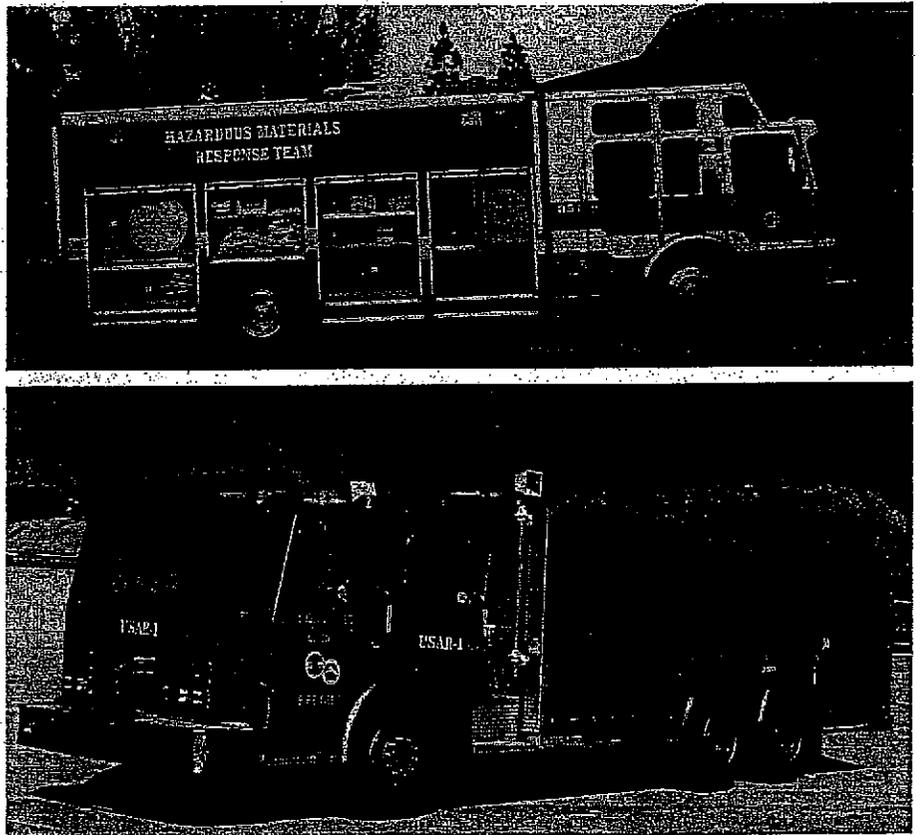


Figure 4-8 (Top): Hazardous materials (HAZMAT) vehicle, Santa Fe Springs (California) Fire Department. A HAZMAT unit responds to HAZMAT incidents, which can vary from industrial spills to air contamination releases and transportation accidents. The unit carries a variety of tools and equipment (including decontamination equipment) to accomplish its tasks. It also has a database of chemical listings. (Bottom) Urban search and rescue (USAR) vehicle, Los Angeles County Fire Department. Firefighters assigned to USAR units are prepared to rescue people who become trapped during earthquakes, floods, or terrorism incidents; on cliffs; after construction accidents or mountain accidents; in confined spaces; and in other situations that require advanced rescue techniques. These units are equipped with state-of-the-art technology to find trapped people and remove them from harm. USAR units also respond to large fires in order to rescue victims or trapped firefighters.

Specialized equipment To handle a wide range of emergencies effectively, many fire departments have developed specialized vehicular equipment. This equipment includes heavy rescues (called "urban search and rescue" in some departments), water tenders and fuel tenders (which carry water or fuel to incidents), food dispensers, de-icing units, mobile air compressors, hazardous materials (HAZMAT) response units, command posts, and watercraft.

HAZMAT units are designed to carry hundreds of tools for specially trained firefighters to use in controlling leaks and spills at HAZMAT emergencies. Such units are often staffed twenty-four hours a day, seven days a week, and are dispatched to incidents other than those involving hazardous materials so that the capabilities of the personnel

assigned to them are put to additional use. Alternatively, some fire departments staff these special units only when a HAZMAT emergency is reported; at all other times, the HAZMAT firefighters staff an engine or truck company.

Mobile command posts are designed to accommodate radios, communications equipment, maps, and support supplies for incident command staff. Whenever a fire or other large-scale emergency warrants its use, the mobile command post is set up to facilitate on-scene command and control of the emergency. When an emergency involves other responding agencies in addition to the fire department, their mobile command posts can be positioned near the fire department's to ensure on-scene coordination.

partment, most departments establish minimum staffing levels (i.e., the minimum number of personnel necessary to operate each unit of firefighting equipment) on the basis of the aforementioned factors.

Fire departments in core communities will protect more people than the community's census population because of commuters who work in such areas during work hours. For a city of 900,000 that is a business hub, with employees at work and visitors in town for conventions and trade shows, the protected population may exceed one million people. According to the NFPA *Fire Protection Handbook*[®], fire staffing levels for cities with a population of 250,000 or more range from 0.5 to 2.7 firefighters per thousand population, with a median of 1.0 to 1.5 per thousand.⁶ Nevertheless, communities must assess their local needs, analyze fire frequency and loss data, and determine the staffing level that meets their own requirements. NFPA Standards 1710 and 1720 provide information concerning staffing.

Another influence on staffing decisions is regulations issued by the federal Occupational Safety and Health Administration in 1998 and applicable to paid firefighters. These regulations do not specify fire company staffing levels, but they do require that when firefighters enter an atmosphere immediately dangerous to life and health, at least two of them must enter together and two more must be available outside to assist if the first two require it. This "two-in/two-out" rule affects fire ground operational policies and procedures in that initial fire attack decisions must consider the number of firefighters on scene as interior operations begin.⁷ (For more detail on the "two-in/two-out rule," see Chapter 3.)

There are many computer models that can help fire departments and local government managers make sound, demand-based decisions about deployment of staff. Good management requires the effective use of expensive, life-saving

Fire Protection Handbook[®] is a registered trademark of the National Fire Protection Association (NFPA), Quincy, MA 02269.

resources—stations, vehicles and equipment, and personnel. Effective use, in turn, requires that deployment strategies be periodically revisited and reevaluated in the context of ever-changing local circumstances and in conjunction with local fire education and fire prevention efforts.

Expanding the services delivered

The role of fire departments varies from community to community. In some places, the department is strictly a line of defense when a fire breaks out. In those places, even when the fire department's response to a fire is swift and of the highest quality, the department is primarily reactive. When and if the need arises and someone calls, the fire department reacts.

For many years, reactive fire protection was all that most communities expected or desired. But when a fire department is able to extend its resources and empower its personnel to do more than just fight fires, the number of ways the department can contribute to the safety and overall good of the public is almost unlimited.

Proactive fire departments identify needs within the community that they can meet. In the 1990s fire departments made significant strides in applying their capabilities to local problems. Such outreaches moved fire departments into the forefront of responding to other emergencies besides fire: prehospital emergency medical care and transportation of the sick and injured, HAZMAT response, disaster preplanning, and technical rescue services. Fire departments also increased their delivery of nonemergency services: fire prevention programs (including code enforcement), public education programs, and various community-oriented services.

When a local government funds the fire department and its career fire protection personnel, one can expect the range of departmental services to blend the reactive with the more proactive. Proactive fire department services, besides increasing the value of budgetary expenditures for the department, benefit the community by improving public safety. And as the fire department assumes a role in improving the quality of life in the community, the department gains public support.

Handling emergency calls

Because emergency response to fires and medical situations must be rapid once a call for service is received, most fire departments share some basic similarities in how they handle these calls. They have a central dispatch center that receives and processes telephone requests for service so that the closest appropriate fire and/or EMS units are dispatched. The actual dispatching of the units is often done with radio signals that activate radio receivers inside fire stations. (Emergency response units also have radios installed so that continuous radio contact between them and the dispatch center is maintained.) The speed with which the dispatch center handles emergency calls is vitally important because time lost there cannot be made up on the road by responding units; excessive road speeds are impractical and unsafe. Thus, as mentioned above, a properly laid out network of decentralized fire stations is critical—and is found in most communities.

In the United States the most common arrangement for handling emergency calls for fire or EMS is to have the local police agency answer the initial call, especially if a 911 system is in use. If the need is for fire services, the call is immediately transferred to the fire communications center for processing and dispatch. In some instances the police dispatcher processes and dispatches fire and EMS calls in addition to police calls. In some localities the fire dispatchers

Exhibit 8

FIRE PROTECTION HANDBOOK

Nineteenth Edition

VOLUME I

Arthur E. Cote, P.E.
Editor-in-Chief

John R. Hall, Jr., Ph.D.
Associate Editor

Pamela A. Powell
Managing Editor

Casey C. Grant, P.E.
Consulting Editor

Robert P. Benedetti, P.E.
Guy R. Colonna, P.E.
Mark T. Conroy
Arthur E. Cote, P.E.

Rita Fahy, Ph.D.
Casey C. Grant, P.E.
Raymond A. Grill, P.E.
John R. Hall, Jr., Ph.D.
Milosh T. Puchovsky, P.E.

Dena E. Schumacher
Gary O. Togle
Robert J. Vondrasek, P.E.
Gregory E. Harrington, P.E.

Section Editors



National Fire Protection Association
Quincy, Massachusetts

Editor-in-Chief:	Arthur E. Cote, P.E.
Associate Editor:	John R. Hall, Jr., Ph.D.
Managing Editor:	Pamela A. Powell
Consulting Editor:	Casey C. Grant, P.E.
Senior Developmental Editor:	Robine J. Andrau
Developmental Editor:	Dana A. Richards
Project Editor:	Irene F. Herlihy
Permissions Editors:	Josiane B. Domenici and Janet I. Provost
Additional Readings Editor:	Nora H. Jason
Editorial-Production Services:	Omegatype Typography, Inc.
Interior Design:	Omegatype Typography, Inc.
Cover Design:	Cameron, Inc.
Manufacturing Manager:	Ellen J. Glisker
Printer:	Courier/National



Copyright © 2003
National Fire Protection Association, Inc.
One Batterymarch Park
Quincy, Massachusetts 02269

All rights reserved. No part of the material protected by this copyright may be reproduced or utilized in any form without acknowledgment of the copyright owner, nor may it be used in any form for resale without written permission from the copyright owner.

Notice Concerning Liability: Publication of this work is for the purpose of circulating information and opinion among those concerned for fire and electrical safety and related subjects. While every effort has been made to achieve a work of high quality, neither NFPA nor the authors and contributors to this work guarantee the accuracy or completeness of or assume any liability in connection with the information and opinions contained in this work. The NFPA and the authors and contributors in no event shall be liable for any personal injury, property, or other damages of any nature whatsoever, whether special, indirect, consequential, or compensatory, directly or indirectly resulting from the publication, use of, or reliance upon this work.

This work is published with the understanding that the NFPA and the authors and contributors to this work are supplying information and opinion but are not attempting to render engineering or other professional services. If such services are required, the assistance of an appropriate professional should be sought.

The following are registered trademarks of the National Fire Protection Association:

National Electrical Code® and *NEC*®
National Fire Codes®
Life Safety Code® and *101*®
National Fire Alarm Code® and *NFPA 72*®
Learn Not to Burn®
Risk Watch®
Sparky®
NFPA 5000™ and *Building Construction and Safety Code*™

NFPA No.: FPH1903
ISBN: 0-87765-474-3
Library of Congress Control No.: 2002105867

Printed in the United States of America

03 04 05 06 07 **Appendix 108** 5 4 3 2 1

significant costs for most municipal fire departments, accounting for approximately 85 to 90 percent of the total expenditures of a fully paid fire department. Personnel costs of combination fire departments may total approximately 40 to 60 percent of their overall budgets.

It is critical for fire department managers to understand thoroughly their jurisdiction's budgeting system. Inadequately prepared budgets can lead to serious monetary shortfalls at the end of the fiscal year. In order to ensure smooth operations, all costs must be estimated realistically and expenditures monitored on a regular basis. An effort should be made to develop a long-range plan that will project capital replacement costs for items such as staff vehicles, fire apparatus, fire stations, and other major pieces of equipment.

Fire apparatus costs normally run from 2 to 3 percent of payroll costs. Some fire departments include an apparatus replacement allowance in their operating budgets, but this item is regularly reduced or eliminated, with the result that apparatus replacement may be included in a capital expenditures budget. Although this reduces the fire department's annual budget, it ultimately results in higher taxes due to interest costs. However, such decisions are generally made above the level of the fire department administration. New fire stations usually are included in a capital improvement budget separate from the fire department budget.

Large fire departments may have separate budget accounts for staff divisions, such as fire prevention, maintenance, and training. Expenditures are charged against specific items in the line budget, and the remaining balance is shown after each expense deduction. Usually, the department head or staff division supervisors have the authority to make emergency transfers of funds between line categories. Transfers between major categories can be made only when authorized by the municipal management, finance officer, or other governing body.

Fire department administrators are required to submit their budget estimates by a specified time for the coming fiscal year. Usually, the budgets are submitted to a finance officer or finance committee, and department heads are then asked to justify specific items. Although the salary total may be governed by contract with the employees, estimates must be included covering all ranks and overtime costs. Quite often salary increases are not determined before the budget is submitted, but municipal administrators commonly make a percentage allowance for increases based on reasonable assumptions or percentages they project to be accepted in contract negotiations. After a departmental budget has been approved by the city administration, it must be approved by the city or town council. In some municipalities, it must be approved by town meeting. With some municipal charters, the council can reduce but not increase the budget. This is to guard against political pressure on the administration. Once approved, the budget takes effect at the beginning of the fiscal year. If not approved in time, it is customary to permit expenditures at the same rate as those made the previous year.

Personnel Management

Fire departments use personnel with specialized skills who are organized into various operational and staff units. Fire depart-

ment management is involved to some degree in the recruitment, selection, and promotion of personnel to fill various positions in the organization. These processes are largely governed by local and/or state law; by personnel agencies, including civil service authorities; and by the direct decisions of the governmental agency operating the fire department. The assignment of available personnel to positions provided in the budgeted organizational structure and the supervision of personnel performance are normally the direct responsibility of the fire department management, although certain assignments may be governed by work contract agreements.

Recruiting. Fire departments are becoming more involved in recruiting efforts to fill vacancies in their ranks. A common arrangement is to conduct recruiting efforts jointly with the local government personnel agency. Because of their makeup, most fire districts and volunteer departments recruit their own members exclusively. Many large fire service organizations have recruitment sections.

Fire department management has three recruitment responsibilities. The first is to develop appropriate recruitment standards. The second is to provide the basic training necessary for the new recruits so they can perform their assigned duties properly. The third is to certify, after providing the basic training, that the new members are ready for appointment as permanent fire fighters or, when individuals prove unable to perform satisfactorily, to recommend that their services be terminated before permanent appointment.

Selection of personnel must meet local, state, and federal standards. U.S. courts have ruled that there must be no discrimination in hiring practices. Many departments administer aggressive recruitment programs designed to increase the representation of women and minorities within their organization. Many communities have identified diversity in the public sector as a value and have established a goal that personnel reflect the diversity of the community they serve. Some rulings prohibit residence requirements for recruits, although fire department rules of employment may stipulate that, because of the emergency nature of the work, employees must reside within a reasonable distance of the community. One court decision has ruled out examinations that require a knowledge of fire department practices and equipment before appointment and in-service probationary training. Many states have adopted, or are in the process of adopting, minimum fire fighter qualifications standards. Selection practices are a sensitive issue, and knowledgeable counsel should be sought to maintain a sound legal foundation.

In most jurisdictions, applications for employment as a fire fighter are obtained from municipal personnel offices or a civil service agency. In at least two states, recruitment is handled by a state civil service commission. Age requirements for entry-level appointments vary and have been impacted by recent federal regulations.

Qualifications. It is imperative that all fire service personnel be fully qualified and capable of efficiently performing the wide range of services necessary to protect life and property. Many states have enacted legislation establishing commissions on fire

Exhibit 10

NFPA 1710

Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments

2004 Edition



NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471
An International Codes and Standards Organization

Copyright © 2004, National Fire Protection Association, All Rights Reserved

NFPA 1710

Standard for the

Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments

2004 Edition

This edition of NFPA 1710, *Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments*, was prepared by the Technical Committee on Fire and Emergency Service Organization and Deployment — Career and acted on by NFPA at its May Association Technical Meeting held May 23–26, 2004, in Salt Lake City, UT. It was issued by the Standards Council on July 16, 2004, with an effective date of August 5, 2004, and supersedes all previous editions.

This edition of NFPA 1710 was approved as an American National Standard on August 5, 2004.

Origin and Development of NFPA 1710

In 2001, the first edition of NFPA 1710 was issued. The development of that benchmark standard was the result of a considerable amount of hard work and tenacity by the Technical Committee members and the organizations they represented. That standard was the first organized approach to defining levels of service, deployment capabilities, and staffing levels for substantially career fire departments. Research work and empirical studies in North America were used by the Committee as a basis for developing response times and resource capabilities for those services, as identified by the fire department.

Following the issuance of the first edition, the NFPA Standards Council asked the Technical Committee to begin the revision process for NFPA 1710 so that a revised standard would be considered at the May 2004 NFPA membership meeting in Salt Lake City, Utah. The Committee met in the fall of 2001 and began the process of reviewing and revising the first edition of NFPA 1710. The Committee formed several Task Groups to look at various aspects of the document. The Committee met and reviewed the work of the Task Groups and the public proposals that had been received, and in the summer of 2003, the Committee's Report on Proposals was released for public review and comment. Based on the Committee's consideration and review of the public input received, this edition of the standard was developed.

The work done by the Committee provides the user with a template for developing an implementation plan on the standard. Most important, it provides the body politic and the citizens a true picture of the risks in their community and the fire department's capabilities to respond to and manage those risks.

3.3.23 Initial Rapid Intervention Crew (IRIC). Two members of the initial attack crew who are assigned for rapid deployment to rescue lost or trapped members.

3.3.24 Life Support.

3.3.24.1 Advanced Life Support (ALS). Emergency medical treatment beyond basic life support level as defined by the medical authority having jurisdiction. [1500:3.3]

3.3.24.2* Basic Life Support (BLS). Emergency medical treatment at a level as defined by the medical authority having jurisdiction. [1500:3.3]

3.3.25* Member. A person involved in performing the duties and responsibilities of a fire department, under the auspices of the organization. [1500:3.3]

3.3.26 Officer.

3.3.26.1* Company Officer. A supervisor of a crew/company of personnel.

3.3.26.2 Incident Safety Officer. An individual appointed to respond or assigned at an incident scene by the incident commander to perform the duties and responsibilities of that position as part of the command staff.

3.3.26.3* Supervisory Chief Officer. A member whose responsibility is to assume command through a formalized transfer of command process and to allow company officers to directly supervise personnel assigned to them.

3.3.27 Operations.

3.3.27.1 Emergency Operations. Activities of the fire department relating to rescue, fire suppression, emergency medical care, and special operations, including response to the scene of the incident and all functions performed at the scene. [1500:3.3]

3.3.27.2* Special Operations. Those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and equipment. [1500:3.3]

3.3.28 Public Safety Answering Point (PSAP). A facility in which 9-1-1 calls are answered, either directly or through re-routing. [1221:3.3]

3.3.29* Rapid Intervention Crew (RIC). A dedicated crew of fire fighters who are assigned for rapid deployment to rescue lost or trapped members.

3.3.30 Related Duties. Any and all functions that fire department members can be called upon to perform in the execution of their duties.

3.3.31 Rescue. Those activities directed at locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and providing for transport to an appropriate health care facility. [1500:3.3]

3.3.32* Staff Aide. A fire fighter or fire officer assigned to a supervisory chief officer to assist with the logistical, tactical, and accountability functions of incident, division, or sector command.

3.3.33 Standard Operating Procedure. A written organizational directive that establishes or prescribes specific operational or administrative methods to be followed routinely for the performance of designated operations or actions. [1521:3.3]

3.3.34 Sustained Attack. The activities of fire confinement, control, and extinguishment that are beyond those assigned to the initial responding companies.

3.3.35 Tactical Considerations. Specific fire-fighting objectives that are intended to support the strategy of the incident.

3.3.36 Team. Two or more individuals who have been assigned a common task and are in communication with each other, coordinate their activities as a work group, and support the safety of one another. [1081:3.3]

3.3.37 Time.

3.3.37.1 Alarm Time. The point of receipt of the emergency alarm at the public safety answering point to the point where sufficient information is known to the dispatcher to deploy applicable units to the emergency.

3.3.37.2 Call Processing Time. See 3.3.37.3, Dispatch Time.

3.3.37.3* Dispatch Time. The point of receipt of the emergency alarm at the public safety answering point to the point where sufficient information is known to the dispatcher and applicable units are notified of the emergency.

3.3.37.4 Response Time. The travel time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

3.3.37.5 Turnout Time. The time beginning when units acknowledge notification of the emergency to the beginning point of response time.

Chapter 4 Organization

4.1 Fire Department Organizational Statement.

4.1.1* The authority having jurisdiction (AHJ) shall maintain a written statement or policy that establishes the following:

- (1) Existence of the fire department
- (2) Services that the fire department is required to provide
- (3) Basic organizational structure
- (4) Expected number of fire department members
- (5) Functions that fire department members are expected to perform

4.1.2* The fire department organizational statement shall provide service delivery objectives, including specific response time objectives for each major service component (i.e., fire suppression, EMS, special operations, aircraft rescue and fire fighting, marine rescue and fire fighting, and/or wildland fire fighting) and objectives for the percentage of responses that meet the response time objectives.

4.1.2.1 The fire department shall establish the following time objectives:

- (1) One minute (60 seconds) for turnout time
- (2)*Four minutes (240 seconds) or less for the arrival of the first arriving engine company at a fire suppression incident and/or 8 minutes (480 seconds) or less for the deployment of a full first alarm assignment at a fire suppression incident
- (3) Four minutes (240 seconds) or less for the arrival of a unit with first responder or higher level capability at an emergency medical incident
- (4) Eight minutes (480 seconds) or less for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department

A.3.3.21 Incident Management System (IMS). Such systems are often referred to as incident command systems (ICS).

A.3.3.24.2 Basic Life Support (BLS). Basic life support personnel also assist higher-level EMS providers.

A.3.3.25 Member. A fire department member can be a full-time or part-time employee or a paid or unpaid volunteer, can occupy any position or rank within the fire department, and can engage in emergency operations.

A.3.3.26.1 Company Officer. This person can be someone appointed in an acting capacity. The rank structure could be either sergeant, lieutenant, or captain.

A.3.3.26.3 Supervisory Chief Officer. The position of supervisory chief officer is above that of a company officer, who responds automatically and/or is dispatched to an alarm beyond the initial alarm capabilities, or other special calls. In some jurisdictions, this is the rank of battalion chief, district chief, deputy chief, assistant chief, or senior divisional officer (U.K. fire service).

A.3.3.27.2 Special Operations. Special operations include water rescue, extrication, hazardous materials, confined space entry, high-angle rescue, aircraft rescue and fire fighting, and other operations requiring specialized training.

A.3.3.29 Rapid Intervention Crew (RIC). The RIC report directly to the incident commander or operations chief. This dedicated crew is not to be confused with the IRIC.

A.3.3.32 Staff Aide. This member is assigned to a supervisory chief officer who assists at incident scene operations, which can include personnel accountability, communications, and other logistical and administrative support. In addition, this member can assist in coordinating training activities, respond to citizen inquiries, coordinate staffing issues and sick leave follow-up, and assign resource allocations for facilities and apparatus under the supervisory chief officer's jurisdiction. Staff aides can be known as field incident technician, staff assistant, battalion fire fighter, or battalion adjutant.

A.3.3.37.3 Dispatch Time. Dispatch times are addressed in NFPA 1221. These include call-taking and call-processing requirements.

A.4.1.1 The AHJ generally has the responsibility to determine the following:

- (1) Scope and level of service provided by the fire department
- (2) Necessary level of funding
- (3) Necessary level of personnel and resources, including facilities

To provide service, the AHJ should have the power to levy taxes or solicit funding, to own property and equipment, and to cover personnel costs. The authority necessary is conveyed by law to a local jurisdiction.

In addition, the governing body also should monitor the achievement of the management goals of the department, such as fire prevention, community life safety education, fire suppression, employee training, communications, maintenance, and department administration.

The organizational statement is a very important basis for many of the provisions of this standard. The statement sets forth the legal basis for operating a fire department, the organizational structure of the fire department, number of members, training requirements, expected functions, and authorities and responsibilities of various members or defined positions.

A key point is to clearly set out the specific services the fire department is authorized and expected to perform. Most fire departments are responsible to a governing body. The governing body has the right and should assert its authority to set the specific services and the limits of the services the fire department will provide. It also has the responsibility to furnish the necessary resources for delivery of the designated services. The fire department should provide its governing body with a specific description of each service, with options or alternatives and an accurate analysis of the costs and resources needed for each service.

Such services could include structural fire fighting, wild-land fire fighting, airport/aircraft fire fighting, emergency medical services, hazardous materials response, high angle rescue, heavy rescue, and others.

Spelling out the specific parameters of services to be provided allows the fire department to plan, staff, and equip, train, and deploy members to perform these duties. It also gives the governing body an accounting of the costs of services and allows it to select those services it can afford to provide. Likewise, the governing body should identify services it cannot afford to provide and cannot authorize the fire department to deliver, or it should assign those services to another agency.

The fire department should be no different than any other government agency that has the parameters of its authority and services clearly defined by the governing body.

Legal counsel should be used to ensure that any statutory services and responsibilities are being met.

The majority of public fire departments are established under the charter provisions of their governing body or through the adoption of statutes. These acts define the legal basis for operating a fire department, the mission of the organization, the duties that are authorized and expected to be performed, and the authority and responsibilities that are assigned to certain individuals to direct the operations of the fire department.

The documents that officially establish the fire department as an identifiable organization are necessary to determine specific responsibilities and to determine the parties responsible for compliance with the provisions of this standard.

In many cases, these documents can be part of state laws, a municipal charter, or an annual budget. In such cases, it would be appropriate to make these existing documents part of the organizational statement, if applicable.

A.4.1.2 There can be incidents or areas where the response criteria are affected by circumstances such as response personnel who are not on duty, nonstaffed fire station facilities, natural barriers, traffic congestion, insufficient water supply, and density of population or property. The reduced level of service should be documented in the written organizational statement by the percentage of incidents and geographical areas for which the response time criteria are achieved.

A.4.1.2.1(2) This service delivery requirement is intended to have a fire department plan and situate its resources to consistently meet a 4-minute initial company fire suppression response and an 8-minute full alarm fire response assignment. While it is recognized that on some occasions (e.g., a company is out of service for training) the initial company response might not meet the 4-minute requirement, the 8-minute criterion must always be met.