Residency Requirements
By: Ryan Lowry

Many towns, cities, and counties have ordinances requiring public employees to live in that jurisdiction or within a certain distance from the work site. One city or town may want to decrease employee tardiness and absenteeism. Others may want their employees to benefit from having a greater knowledge of the city's conditions and its citizens. Whatever their rationale may be, implementation of residency requirements has been controversial. Employees may not want to move into the city if there is a higher tax rate or if a higher crime rate in comparison to their current residence. Similarly, employees may be reluctant to move if their family is settled in the suburbs. Sometimes a jurisdiction will offer more flexibility by allowing employees to live within a certain distance from the work site. For example, the Township of Whitehall, Pennsylvania requires all employees of the Township to reside either within the boundaries or within a five-mile radius of such boundaries. Also, many cities and towns give new hires time to move into the new area. For example, the City of St. Louis, Missouri requires all new hires to move into the city within 120 days. The time a municipality usually allows for a new hire to move into the jurisdiction varies but most fall somewhere between 30 days and 18 months. Some jurisdictions also allow for waivers or extensions of the time. The City of Kenosha, Wisconsin allows the Civil Service Commission to grant an extension of the six and three month move dates, for "specific and substantial cause." This can be important, especially when the racial make-up of the town or city is such that requiring residency at the time of hire could result in a court challenge.

In New Jersey, a township lost a challenge to its residency requirement because it resulted in only white people being hired for the jobs. In that case, the United States Court of Appeals for the Third Circuit ruled that the Town of Harrison's policy of hiring only residents violated Title VII of the Civil Rights Act of 1964. Harrison is a small town adjacent to Essex County and "could very well be considered an extension of the City of Newark." The residency requirement resulted in a disparity between the pool of qualified black applicants and the actual black representation among employees. Newark Branch, National Association for the Advancement of Colored People, et al., v. Town of Harrison, New Jersey, Docket No. 90-5897, July 1991. There have been numerous court challenges to residency requirements. Employees may argue that the requirement unconstitutionally infringes on a right to travel or on equal protection of the laws. Generally, these challenges have not been successful. In 1976, the United States Supreme Court upheld Philadelphia's municipal regulation requiring city employees to be residents. In that case, McCarthy v. Philadelphia Civil Service Commission, a former fire department employee moved from Philadelphia to New Jersey and was subsequently fired. The former employee sued arguing that the residency requirement violated his right to interstate travel. The Supreme Court disagreed with him and found that an individual does not have a right to be employed by the City of Philadelphia while living elsewhere. Docket No. 75-783, March 1976.

Although at the federal level, the Supreme Court has upheld residency requirements for public employees, many states have taken the matter into their own hands. California and
Colorado are examples of two states that ban local governments from establishing residency requirements. Colorado's law for example states that: The general assembly hereby finds...that the imposition of residency requirements by public employers works to the detriment of the public health welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds...that the right of the individual to work in or for any local government is a matter of statewide concern and accordingly the provisions of this section preempt any provisions of any such local government to the contrary. Colorado State Statute 8-2-120. However, municipalities in Colorado that have home rule, such as the City and County of Denver, can and do maintain residency requirements. California law permits municipalities to restrict employees by distance rather than residency in a particular jurisdiction. A city in California can require employees to live within a "reasonable and specific distance of their place of employment or other designated location." The specific employees who must abide by residency requirements may also vary from jurisdiction to jurisdiction. An informal survey conducted by IPMA revealed that municipalities and states are almost equally divided between requiring all employees to live within certain boundaries or restricting only a few job classifications.

The City of Sidney, Ohio, requires all persons appointed to City service to reside in the surrounding County of Shelby. On the other hand, the City of Roanoke, Virginia requires residency only for department heads. Colorado state law allows municipalities to establish residency requirements for "key employees with duties which clearly and demonstrably require them to be close to their place of employment." Another common restriction is for a municipality to require only public safety employees to live within the area. The City of Winchester, Kentucky requires public works employees to live within the county, and firefighters to live in the county or an adjoining county. In Waukesha County, sworn officers in the Sheriff's Department are required to live within the county. In some cases, a municipality will want to waive a residency requirement. There may be a position that needs to be filled by someone with very specialized skills and no one is available in the area. The City of St. Louis's residency requirement permits waivers for any position that requires "a very high degree of specialized education or skill and when qualified candidates who are willing to fill said position and reside within the City of St. Louis are not reasonably available." A jurisdiction also may want to waive the residency requirement for hardship, when, for instance, an employee has been unable to sell their home. Such is the case in Niles, Illinois, where the President and Village Board of Trustees, may exempt an employee from the residency requirements when there would be hardship.

Residency requirements may also be part of a collective bargaining agreement. In Eastpointe, Michigan, a collective bargaining agreement between the Teamsters Local 214 and the City, requires all members of the bargaining unit to live within 12 miles of the corporate limits of the city. A similar provision exists in the Greene County, Ohio, Sheriff's office. That provision requires all employees of the Sheriff's Office to be "bona fide" residents of the county. In certain cases, a municipality will use incentives to encourage residency in their jurisdictions. The Texas legislature placed restrictions on what a city may require, but Plainview does require top administrators to live in the city.
Public safety personnel have to live within 20 minutes of the city limits. The police department is assigned vehicles, but they may only take them home and use the vehicles for personal use if they live inside the city. Likewise, all other qualified personnel may only take home vehicles if they reside within the city. Residency in the City of Saint Paul, Minnesota can expand an applicant's chances of being hired by the city. Effective November 1994, an ordinance provides that non-promotion applicants for city employment exams may elect, at the time they file their application for the test, to have an additional ten points added to their final scores. If an applicant decides to have the extra points added and if the applicant is hired by the city on an original entrance basis, that applicant must become a resident of the City of Saint Paul within six months of the end of this/her probationary period; thereafter, employees must maintain residency as a continuing condition of employment, both in their original entry position and in any subsequent city position.

Agencies also entice employees to their city limits by offering low interest loans, city-owned or subsidized rental housing or salary incentives. The City of Anaheim, California Police Residence Assistance Program provides a $10,000 no interest forgivable loan for qualified police officers interested in residing in the city. Full-time (non-probationary) police officers may receive the loan under the condition they purchase real property within the city limits and occupy the property purchased as their principal residence throughout the term of the city loan. To remain eligible, the individual must maintain a status of active full-time Peace Officer employed by the city. The loan is forgiven at the rate of $1,000 per year of employment. The City of Hays, Kansas allows employees to live anywhere in the county, but encourages employees to live in the city. Only city employees or those living within a three-mile radius are allowed to take home city vehicles. Police officers who live outside the city limits will not be picked up or taken home after a shift change by a police vehicle. In addition, the Hays have a hiring preference for residents. All other things being equal, Hay’s resident will receive preferential treatment in recruitment. Residency requirement controversy continues, innovative responses will likely continue.