



CITY COUNCIL

City Clerk's Office 1/5/2022 12:00:00 PM

Regular Meeting Agenda~

I hereby notify you that the following items of business have been filed with this office and can be acted upon at the meeting of the City Council **Monday January 10, 2022** at 07:00 PM.

City Clerk

Possible Public Speak-Out Time 6:30 PM

Call to Order

7:00 PM Meeting called to order on January 10, 2022 at Virtual Meeting (Zoom)

Moment of Silence - Pledge of Allegiance

Reports of Committee

Grants

- (1.) MassWorks Infrastructure Grant - No Match - \$400,000 (Mayor Sarno)
- (2.) Byrne JAG Grant - No Match - \$138,875 (Mayor Sarno)

Orders

- (3.) 2022 City Council Rules and Orders (President Williams)
- (4.) Order Requesting the Enforcement of Chapter 73 (At Large Councilor Hurst, At Large City Councilor Whitfield)

Order Requesting the Enforcement of Chapter 73

Section 73-15 Residency Compliance Commission & Section 73:16 Residency Compliance Unit

Resolutions

- (5.) Resolution in Favor of the Tenant Protection Act



REQUEST FOR GRANT SETUP

This form and the required attachments are required by the Office of the City Comptrollers before a Grant Fund and related accounts will be created in MUNIS. Please do not use this form for requesting a non-grant related account to be created – use the Request for New Account form instead. Please return this form and the required attachments to the Office of the City Comptrollers.

All fields are mandatory.

Date of Request	12/15/2021
Department Requesting Grant Setup	Public Works
Department Phone # (Please include extension)	750-2728
Name and Title of Person to Contact in Case of Questions Contract Administrator	Peg Merrill
Was this Grant previously setup for a prior fiscal year? No	
If yes, please indicate your previous project number:	

If this is a new Grant, have you filled out the “Approval to apply for a grant” Form?
(Y/N) Y If yes, please attach a copy of the Approved Form.

Grant Type:

- X State – Exec. Office of Housing & Economic Development
 Federal Pass-Through DOE– School
 Federal Direct– School
 Federal – City
 State DOE– School
 State Other – School
 State – City
 Private/Other

Grant Name: EOHED – MassWorks Infrastructure Program Grant for West St./Plainfield St. (Route 20) Corridor Improvements Project Design.

Attachment: MassWorks Infrastructure Grant - \$400,000 (6565 : MassWorks Infrastructure Grant - No Match - \$400.000)

Please list all object codes needed for the grant.
(Attach additional sheets if additional orgs and roll-ups are needed):

Org Code:

Object Codes: 530600, 580800

Budget Roll-Up Codes:

I hereby attest that under the penalties of Chapter 656, I will adhere to all regulations in this grant agreement. I am responsible for timely and accurate reimbursements in the amounts listed above.


Signature

12-15-21
Date

Please attach the following documents:

- ☒ Signed Approval to Apply for a Grant Form
- ☒ Grant Award Letter
- ☐ City Council/Mayor Approval
- ☐ Any other relevant documentation

This Form and all relevant attachments will be scanned and attached in the Grant Maintenance module in MUNIS and can be viewed or printed at your convenience.



Commonwealth of Massachusetts
**EXECUTIVE OFFICE OF
 HOUSING & ECONOMIC DEVELOPMENT**
 One Ashburton Place, Room 2101, Boston, MA 02108

CHARLES D. BAKER
 GOVERNOR

KARYN E. POLITO
 LIEUTENANT GOVERNOR

MIKE KENNEALY
 SECRETARY

TELEPHONE: (617) 788-3610
www.mass.gov/hed

October 4, 2021

Domenic Sarno, Mayor
 City of Springfield
 36 Court Street
 Springfield, Massachusetts 01103

Dear Mayor Sarno:

Thank you for submitting this application to the FY2022 Community One Stop for Growth. The three One Stop partner agencies worked together to carefully review and evaluate all eligible applications and recommended the most ready and highest-impact projects for a grant. Your application was reviewed by the program(s) that could best serve the project's funding needs.

On behalf of the Baker-Polito Administration, I am pleased to inform the **City of Springfield** (Grantee) that a grant in the amount of **\$400,000** from the MassWorks Infrastructure Program has been approved to support the **West St. / Plainfield St. (Route 20) Corridor Safety Improvements** project.

To begin preparing a contract for this grant, please respond with a completed Pre-Contract Form (template attached) no later than January 31, 2022. A member of the MassWorks team will reach out to your office directly to discuss any additional conditions or requirements related to this grant award and next steps.

Please be advised that this letter does not constitute an agreement or contract with EOHD or the Commonwealth of Massachusetts, nor does it confer any rights onto the Grantee. The Grantee is not authorized to proceed with any purchases or construction work, for which it expects reimbursement from this grant, until a contract has been fully executed. The grant commitment outlined above is contingent upon successful execution of a contract no later than June 30, 2022, with a project scope/timeline confirming that the project can be completed within the next three years. Grantees unable to meet these deadlines, will need to reapply in a future competitive round.

Finally, please note that public announcement of this award is embargoed until the Administration has had the opportunity to formally announce it through a local event and/or media release. Please refrain from sharing or publicizing news about this award outside of your organization until it is officially announced.

Sincerely,

Mike Kennealy
 Secretary

c.c.: Juan R. Vega, Assistant Secretary for Communities and Programs



Attachment: MassWorks Infrastructure Grant - \$400,000 (6565 : MassWorks Infrastructure Grant - No Match - \$400,000)



City of Springfield, Massachusetts

Form: Approval to Apply for a Grant

General Information			
Title of Grant	Community One Stop for Growth		
Submission Due Date	June 4, 2021		
Granting Agency	Executive Office of Housing & Economic Development		
Purpose/Summary of Grant:	The state has put several grant programs under this one umbrella. We are applying for two "Massworks" type projects - West Street redesign and Chestnut Street corridor design. In addition, we're applying for the Underutilized Buildings program for Old First Church ADA improvements and the Main Street Convention District.		
Amount of Grant	TBD	Department	OPED and DPW
Staff Contact Name	Brian Connors	Contact Information	787-6664
Matching funds and/or support required			
Are matching funds required?	☐ Yes ☒ No	If yes, dollar amount, timing, and source:	
Are you hiring new staff under this grant? Note: the City's <u>Fiscal Policies and Procedures</u> require that the hiring department structure the hiring as grant funded and temporary.	☐ Yes ☒ No	If yes, describe how this will be done:	
If hiring, list # of positions:			
Full time or part time?			
Fringe Benefits? (Y/N)			
Does work needed by the grant require staff hours from other departments?	☐ Yes ☒ No	If yes, describe whether that department or those departments have been notified, and whether those staff hours are covered under the grant:	
Are you purchasing IT equipment under this grant? Note: the City's <u>Fiscal Policies & Procedures</u> require that MTS be notified of all IT purchases.	☐ Yes ☒ No	If yes, describe equipment and software (include information on how upgrades for both hardware and software will be funded):	
Is IT equipment and software support covered under the grant?	☐ Yes ☒ No	If yes, describe costs covered and who will be providing the support:	
Are you requesting capital projects under this grant? Note: the City's <u>Fiscal Policies & Procedures</u> require capital project be approved in the City's centralized capital planning process.	☐ Yes ☒ No	If yes, describe who will be providing on-going maintenance and whether / how those cost are covered:	
Sign-off			
DEPARTMENT HEAD		Date	6/2/21
GRANTS DIRECTOR	_____	Date	

Please Scan & E-mail this Form to Melanie Acobe at macobe@springfieldcityhall.com

Attachment: MassWorks Infrastructure Grant - \$400,000 (6565 : MassWorks Infrastructure Grant - No Match - \$400,000)



REQUEST FOR GRANT SETUP

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All fields are mandatory.

Date of Request

01/04/2022

Department Requesting Grant Setup

Office of Administration and Finance

Department Phone # (Please include extension)

413-784-4883

Name and Title of Person to Contact in Case of Questions

Sean Pham; Senior Budget Analyst

Was this Grant previously setup for a prior fiscal year?

If yes, please indicate your previous project number:

Yes, 62421 (Please use project code 62422)

If this is a new Grant, have you filled out the “Approval to apply for a grant” Form?

(Y/N) N

If yes, please attach a copy of the Approved Form.

Grant Type:

State – Highway

Federal Pass-Through DOE– School

Federal Direct– School

X Federal – City

State DOE– School

State Other – School

State – City

Private/Other

Grant Name:

JAG Grant

Total Grant Amount Awarded: **\$138,875.00**

Attachment: JAG 62422 (6578 : Byrne JAG Grant - No Match - \$138,875)

Is this a Reimbursable Grant? (Y/N) **Y**

A Reimbursable Grant is defined as one that requires that you pay for expenses first and then you apply to the grantor for a reimbursement of the exact amount actually expended.

If it is a Reimbursable Grant, please enter Grantor contact information or the CID # if Grantor is already in the customer file:

Entity Name **Department of Justice**
 Contact Person
 Street Address
 City, State, Zip Code
 Telephone
 Fax
 E-Mail

Actual Award Date **10/01/2020**

Board Approval Date

Start Date

Expiration Date **09/30/2024**

Renewal Action Date (optional)

If there are any Matching Funds:

Type
 Percent
 Amount

Comments re: Description/Purpose of Grant

Funding will support training efforts identified for SPD along with technological improvements.

Comments re: Conditions/Restrictions of Grant

If this is a Federal Grant, enter CFDA#: **16.738**

If applicable enter the State ID # :

What is the required drawdown frequency?

(Ex: Monthly, Quarterly) **Quarterly**

If payment is to be sent by Grantor as a Wire,
 Please enter any wire reference/identification # that may be used (if known)

Attachment: JAG 62422 (6578 : Byrne JAG Grant - No Match - \$138,875)

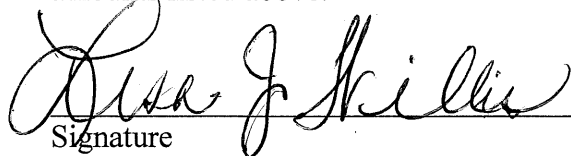
Please list all object codes needed for the grant.
(Attach additional sheets if additional orgs and roll-ups are needed):

Org Code:

Object Codes:

Budget Roll-Up Codes:

I hereby attest that under the penalties of Chapter 656, I will adhere to all regulations in this grant agreement. I am responsible for timely and accurate reimbursements in the amounts listed above.


Signature


Date

Please attach the following documents:

- ☐ Signed Approval to Apply for a Grant Form
- ☐ Grant Award Letter
- ☐ City Council/Mayor Approval
- ☐ Any other relevant documentation

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Attachment: JAG 62422 (6578 : Byrne JAG Grant - No Match - \$138,875)

✓ **Award Letter**

October 12, 2021

Dear MELANIE ACOBE,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Justice Programs (OJP) has approved the application submitted by SPRINGFIELD, CITY OF (INC) for an award under the funding opportunity entitled 2021 BJA FY 21 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation. The approved award amount is \$138,875.

Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by OJP, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

Congratulations, and we look forward to working with you.

Maureen Henneberg
Deputy Assistant Attorney General

City of Springfield, MA
Monday, July 19, 2021

Chapter 73. Personnel

Article II. Residency Requirements

[Amended 10-21-1991; 2-24-1995; 11-18-2003; FCB 5-14-2009]

§ 73-8. Condition of employment.

[Amended 9-9-2013]

- A. Except as provided for in this article, every person first employed by the City of Springfield on or after March 17, 1995, shall, within 12 months of the start of employment, be a resident of the City of Springfield and shall not cease to be a resident during his employment by the City.
- B. For the purpose of this article, an employee shall be any person receiving monies from the City or any City department subject to withholding taxes by the state or federal government.
- C. Notwithstanding the provisions of this article, all employees employed by the City of Springfield on March 17, 1995, shall be considered to have fully complied with the residency provisions of this article.

§ 73-9. Condition of promotion.

Except as provided for in this article, all persons promoted by the City on or after March 17, 1995, shall be or within one year of such promotion become a resident of the City as defined herein. Failure to do so shall be determined to be voluntary termination of employment.

§ 73-10. Certificate of residence.

- A. Upon taking employment with the City, and annually on February 1 thereafter, every person subject to this article shall file with his or her department head, or like officer, a certificate, signed under the pains and penalties of perjury, stating his or her name and place of residence. A copy of every such certificate shall be transmitted by the department head or like officer to the Residency Compliance Commission within five business days of filing.
- B. Upon receipt of a certificate indicating a place of residence not within the City, or if no such certificate is filed, the department head or like officer shall forthwith strike the name of the employee from the payroll, that person shall cease to be employed by the City, and the department head or like officer shall give notice of his or her action to the City Clerk, who shall transmit the same to the City Council, Mayor, and Collector/Treasurer. This subsection shall not apply to employees exempted from the residency ordinance as provided for in this article.
- C. No person so stricken from the payroll shall be reemployed by the City for a period of one year following the cessation of his or her employment.

- D. Every employee shall be furnished a copy of the residency ordinance when hired and annually thereafter, but failure to receive a copy shall not be held to excuse any violation.

§ 73-11. Conflict with collective bargaining agreements and general laws.

- A. To the extent permissible by law, no collective bargaining agreement hereafter entered into by the City of Springfield shall contain any provision contrary to the provisions hereof, nor shall the absence of any provision with respect to the residency of any person hired after the date of such contract be deemed to prevent enforcement of this article.
- B. To the extent permissible by Chapter 31 of the General Laws, every examination held to establish a civil service list for employment by the City of Springfield shall be restricted to the City of Springfield residents. In the event this section shall be deemed to be in conflict with a provision of any general or special law, the provisions of that general or special law shall govern, and shall not defeat the application of this article with respect to any position not governed by that law.

§ 73-12. Board and commission members.

- A. All persons appointed to membership on boards and commissions of the City shall be residents of the City during the terms for which they are appointed.
- B. This section shall not apply to persons appointed to advisory committees or to committees established under federal or state grant-in-aid programs except where otherwise specified.

§ 73-13. Waiver.

[Amended 4-4-2016]

- A. The provisions of this chapter may be waived only in the manner described herein. All requests for waiver shall be submitted in writing to the Director of Labor Relations. The Director of Labor Relations shall redact all personal information related to the individual requesting the waiver, and forward the request to the Mayor and City Council. With the request, the Director of Labor Relations shall provide details about the job posting, including, but not limited to: the date the job was posted, the date the posting was closed, the number of applicants who applied, in said notice forwarded to the City Council, the Director of Labor Relations shall redact all personal information, including the name of the waiver and the number of Springfield residents who applied. After the request is forwarded to the Mayor and the City Council, the job posting will be opened for a second time for a period not less than seven days. The posting will be publicly posted on the City's website.
- B. If a candidate, who meets the minimum qualifications for the posted position and who resides within the City of Springfield, does not apply for the position, then the Mayor, in his sole discretion, may grant the waiver. Any such waiver granted by the Mayor must be forwarded directly to the City Council for purposes of notification. Nothing in this section shall be deemed to invalidate waivers granted by the Mayor or the Control Board prior to April 1, 2016, nor shall this section restrict the Mayor to make reappointments to existing City employees.
- C. A department head or deputy department head shall not be eligible for a waiver of the residency requirement.

§ 73-14. Actual principal residence.

In construing this article, "residence" shall be the actual principal residence of the individual, where he or she normally eats and sleeps and maintains his or her normal personal household effects. This article shall be deemed to affect both civil service and non-civil service employees of the City.

§ 73-15. Residency Compliance Commission.

- A. There shall be a Residency Compliance Commission ("Commission") comprising seven Commissioners, five to be appointed by the Mayor of the City of Springfield with one being a City union representative, and two other members, one of whom shall be the City's affirmative action officer and one of whom shall be the President of the City Council, or such other Councilor designated from time to time by the Council President.
- B. The purpose of the Commission shall be to investigate and make findings relative to compliance with Springfield's residency ordinance.
- C. All Commissioners, with the exception of the Council President, shall serve coterminous with the Mayor and any vacancies shall be filled by the Mayor for the unexpired term. The Commission shall elect annually a Commissioner as Chairperson. Commissioners shall serve without compensation and shall be classified as special municipal employees for the purposes of the State Ethics Law, General Laws Chapter 268A.
- D. The Commission shall have the power to investigate, conduct hearings, administer oaths, take testimony of any person under oath and in connection therewith to require the production for examination of any documents, books, papers, or evidence relating to any other matter in question or under investigation by the Commission. The Commission may appoint from within or without its membership a hearing officer to conduct particular hearings upon a majority vote of the Commission. The employees who are the subject of a hearing shall be afforded notice and an opportunity to provide testimony, witnesses, documents and to have counsel present.
- E. Should the Commission, after hearing, find that an employee who is subject to the residency ordinance does not reside within the City of Springfield, the Commission shall issue its findings to the employee's department head, who shall recommend appropriate action to the Mayor of the City of Springfield.
- F. Semiannually, the Commission shall provide a written report to the Mayor, who shall file a copy with the City Council. This report shall include all investigations and findings by the Commission with respect to the residency ordinance.

§ 73-16. Residency Compliance Unit.

- A. There shall be a Residency Compliance Unit ("Compliance Unit") within the Personnel Department, which shall also have the power to conduct investigations of City employees and officers where there is reason to believe that an employee or officer may be in violation of the residency ordinance. The Springfield Police Department shall serve as investigators for both the Compliance Unit and Commission.
- B. The Compliance Unit shall ensure, pursuant to the residency ordinance, the filing of residency affidavits and submission of additional documentation to verify residency. It shall also serve as a vehicle whereby employees and the general public may report those who are believed to be in violation of the residency ordinance. Where questionable claims of residency exist, the Compliance Unit shall forward such to the Compliance Commission for further investigation as delineated in § 73-15 above.

§ 73-17. Residency for former positions or titles.

For the purpose of this article, all positions or titles listed in former Section 3.08.080 (November 11, 1991 and March 25, 1992) shall be governed by this article, unless excluded by law or collective bargaining agreements.

Edward M. Pikula, Esq.
City Solicitor

Law Department
 36 Court Street, Room 210
 Springfield, MA 01103
 Office: (413) 787-6085
 Direct Dial: (413) 787-6088
 Fax: (413) 787-6173
 Email: epikula@springfieldcityhall.com



THE CITY OF SPRINGFIELD, MASSACHUSETTS

September 13, 2021

Marcus Williams, City Council President
 City of Springfield
 36 Court Street
 Springfield, MA 01103

Re: Residency Ordinance

Dear Councilor Williams:

The City Council requested a legal opinion from the Law Department “regarding compliance by the City of Springfield with Chapter 73, Article II, Section 73-15 and Section 73-16”.

Section 73-15 establishes a Residency Compliance Commission. Section 73-16 establishes a Residency Compliance Unit.

The Law Department's review of this matter has disclosed that on June 15, 1995, Springfield Mayor Robert T. Markel appointed five members to the Residency Compliance Commission for a one-year term expiring on January 1, 1996. For the past twenty-five years no Mayor has ever made any appointments to the Commission. There are no records of the Residency Compliance Commission ever meeting. However, the Personnel Department does have an operational residency compliance unit which has been successful in enforcing the Ordinance.

The issue of compliance with the Residency Ordinance was the subject of a trial held in Hampden County Superior Court (Docket No. 1679-00364). That trial ended and the case has been under advisement with the judge, awaiting a decision, since March 21, 2021. It is not known when a decision will be issued. It is hoped that we will receive a decision in the near future, and the decision may provide some legal guidance on this issue. However, the evidence in that case provides some factual background on the issue of compliance. A review of that evidence follows with reference to the trial exhibits.

In that case, Plaintiffs called Attorney William Mahoney, Director of Human Resources and Labor Relations for the City of Springfield. He testified that at the time he began his tenure as Personnel and Labor Relations Director in 2009 only five of the City's twenty-

Councilor Marcus Williams
September 13, 2021
Page - 2 -

six collective bargaining contracts included residency provisions, but at the time of trial nineteen of the City's twenty-four collective bargaining agreements included such provisions. (Tr. I-90, lines 4-8).

Attorney Mahoney also testified that the Certificates of Residence, required pursuant § 73-10 of the Ordinance, are distributed along with the memorandum as evidenced by the memorandum introduced into evidence. (Exhibit 11). (Tr. I-85, lines 2-16).

The only evidence of non-compliance introduced at trial was the testimony of Marc Savage, that his compliance with regard to submitting a Certificate of Residency has been limited or non-existent. Marc Savage testified that he had been informed by his union that union members were not subject to the Residency Ordinance. (Tr. II-114, line 24 to II-155, line 14).

Mahoney testified, and it was undisputed, that the Residency Enforcement Unit in his department conducts investigations and he referenced 43 occasions of letters being issued to employees where there was an issue of potential non-compliance and four incidents where investigations were scheduled or held.

He testified that in most cases the complaint was unfounded, or the employee came into compliance or resigned prior to a hearing. He testified, and it is undisputed, that it was part of his charge by the Mayor at the time of hiring to negotiate collective bargaining agreements that included residency as part of terms and conditions of employment and that he has done so successfully. (Tr. I-96-97).

One of the issues at trial was an alleged failure of former Fire Commissioner Conant and the City of Springfield to enforce the residency ordinance. As the undisputed evidence at trial shows, rather than a failure to enforce, the residency of the District Chiefs has been the subject of collective bargaining and the subject of dispute between the City as the public employer and the unions in the Fire Department dating back to the 1970's. (Tr. I-15, line 20-25).

Further evidence of enforcement, which was introduced by the Plaintiffs, was that disciplinary charges were faced by Deputy Chief Glenn Guyer and subsequent action was taken by the Mayor by refusing to renew Fire Commissioner Conant's employment contract after Conant ruled that Deputy Chief Guyer was exempt from the Ordinance.

Former Commissioner Conant's decision in the Guyer matter was contrary to the legal position asserted by the City's Labor Relation Attorney at Guyer's hearing. (See Hearing Decision - Exhibit 9 with attachments - and Conant employment contract attached to the Amended Complaint). (Tr. I-176, line to I-180, line 4).

Councilor Marcus Williams
September 13, 2021
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As shown by these facts, since 2009, the City's Executive Branch has made enforcement of the Residency Ordinance a priority. An apparent failure to enforce the provisions in the Fire Department was followed by the non-renewal of a Fire Commissioner's employment contract. The Labor Relations Director testimony that Residency was a priority of the Mayor at the time of hiring the Director, and the success of the administration in bargaining for residency provisions into union contracts from only five in 2009 to nineteen of twenty-four collective bargaining contracts at the time of trial in March, 2021, is proof of that success. Similarly, the success of the Compliance Unit has obviated the need for the Commission.

While the lack of mayoral appointments, and the apparent lack of any meetings of the Residency Commission when there were members in 1995 is apparent, that issue most likely stems from the fact that an Ordinance may be valid and enforceable, but it must give way when it conflicts with the Massachusetts General Laws and collective bargaining agreements.

The majority of City employees are teacher in the School Department. Under state law, teachers are exempt from residency provisions. Similarly, fire employees are covered under provisions of the Massachusetts law. Residency provisions involving union employees cannot be enforced unless bargained into the union contracts. The City's non-union employees are a small part of the workforce. To date, enforcement has not required the use of a Residency Commission as noted by the success of the Unit described in Attorney Mahoney's testimony.

I hope this information addresses your questions. Do not hesitate to contact should you have any further questions.

Sincerely,



Edward M. Pikula
City Solicitor

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
DOCKET NO. 1679CV00364MARC SAVAGE and others¹
PlaintiffsHAMPDEN COUNTY
SUPERIOR COURT
FILEDvs.

DEC 28 2021

CITY OF SPRINGFIELD and others²
Defendants
CLERK OF COURTS

and

LOCAL 648, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO,
SPRINGFIELD ASSOCIATION OF FIREFIGHTERS
Intervener**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER****I. Background**

This litigation arises out of the alleged longstanding noncompliance with a Springfield ordinance, Chapter 73, Art. II, §§ 73-8 through 73-17 (the residency ordinance), requiring, *inter alia*, many municipal employees to reside in Springfield as a condition of employment. This suit was prompted by promotions of nonresident employees of the Springfield Fire Department (SFD) to higher ranking positions such as district chiefs. Promotions and disciplinary actions with respect to those employees must comport with the residency ordinance, the relevant collective bargaining agreement, and civil service laws.

¹ Herbert Powell, Michele Hyde, Richard I. Greenberg, Nicole Baker, Shamone Cox, Myya T. Seago, Zaida Govan, Cynthia Tucker, William E. Blatch, and Frederick B. Lyons, Jr.

² City of Springfield Fire Department, the Springfield Fire Chiefs Association, and Joseph Conant, personally and in his capacity as Fire Commissioner of the City of Springfield Fire Department.

This action was filed in May 2016 by eleven taxpayers pursuant to G. L. c. 43B, § 14(2), and individually under G. L. c. 231A by Marc Savage, an employee of the SFD for over 42 years. The plaintiffs allege in their verified amended complaint that the City, the SFD, its former Fire Commissioner Joseph Conant (collectively, the municipal defendants), and the Springfield Fire Chiefs Association (FCA),³ have not complied with or enforced the residency ordinance. The plaintiffs seek a declaration of the rights and obligations of the parties regarding enforcement of the residency ordinance at the time this action was filed in 2016, as well as under the prior versions of the residency ordinance dating back to March 17, 1995. On June 29, 2016, the union representing lower ranking SFD firefighters, Local 648, International Association of Firefighters, ALF-CIO, Springfield Association of Firefighters (Local 648), was allowed to intervene as a defendant.

In February of 2017, the court (Sweeney, J.) ruled on defense motions under Mass. R. Civ. P. 12(b)(6) to dismiss and under Mass. R. Civ. P. 12(c) for judgment on the pleadings. Judge Sweeney allowed the municipal defendants' motion to dismiss the plaintiffs' amended complaint only insofar as it sought an order compelling enforcement of the residency requirement. She determined that the defendants otherwise had not met their burden in seeking dismissal of the plaintiffs' amended complaint. Contrary to the plaintiffs' reading of that decision, Judge Sweeney made no other rulings or any findings on the rule 12 motions. See *Welch v. Sudbury Youth Soccer Assoc'n, Inc.*, 453 Mass. 352, 353 (2009) (motion for judgment on pleadings challenges legal sufficiency of complaint); *Ridgeley Mgmt. Corp. v. Planning Bd. of Gosnold*, 82 Mass. App. Ct. 793, 801 (2012) (motion for judgment on pleadings limits judge to

³ FCA is the union representing higher-ranking SFD firefighters.

surface of complaint and fact finding is not possible). In March of 2017, the plaintiffs moved to amend their complaint again, to include a claim for mandamus relief under G. L. c. 249, § 5, or another equitable remedy. Judge Sweeney denied that motion because the proposed amended complaint suffered from defects independent of the mandamus issue, such as seeking an order that the defendants terminate the employment of persons who were not parties to this lawsuit. Undeterred, in June of 2017, the plaintiffs moved for judgment on the pleadings, again seeking mandamus relief based on what they erroneously called Judge Sweeney's findings in the February 14, 2017, decision. In 2019, Judge Sweeney denied that motion.

This matter was tried before me, jury-waived, over the course of several days in late 2020, with closing arguments presented earlier this year. In their post-trial proposed findings and rulings, all of the parties agree that the residency requirement in the ordinance is valid and enforceable. The plaintiffs seek a declaration of the parties' rights and obligations under the ordinance. Upon consideration of the credible evidence presented and inferences reasonably drawn from it, I make the following findings of fact, rulings of law and order.

II. Preliminary Rulings

The plaintiffs filed this action under G. L. c. 43B, § 14(2), which permits ten or more taxpayers to enforce the Home Rule Amendment, G. L. c. 42B, § 13 (city may adopt ordinances which do not conflict with State law), by requesting a declaration under G. L. c. 231A as to whether an ordinance is valid.⁴ Declaratory relief may be used to secure a determination of rights

⁴Although the municipal defendants view the ordinance as valid, they argue that the plaintiffs are not entitled to the relief they request because they have not proven that any "procedural error or omission . . . materially and substantially affected the public." That phrase is grafted from G. L. c. 43B, § 14(3) ("No charter adoption, revision or amendment shall be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption, revision or amendment"). Because § 14(3)

under a charter, a statute, or an ordinance and resolve questions about its validity and construction. G. L. c. 231A, §§ 1- 2. See *Tri-Nel Management, Inc. v. Bd. of Health of Barnstable*, 433 Mass. 217, 226 & n.11 (2001). To bring an action for declaratory relief, there must be an actual controversy and legal standing. *Mass. Assoc'n. of Independent Ins. Agents and Brokers, Inc. v. Comm'r of Ins.*, 373 Mass. 290, 292 (1977). The actual controversy requirement is to be liberally construed and is presented when "there exists a real dispute" caused by the assertion by one party of a duty, right or other legal relation in which the party has a "definite interest in circumstances indicating that failure to resolve the conflict will almost inevitably lead to litigation" (quotations and citations omitted). *St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Dept. of Springfield*, 462 Mass. 120, 129 (2012).

These requirements have been met. Although the parties all stated during trial that they agree that the residency ordinance is valid and enforceable and, therefore, that a declaration to that effect could enter, a closer examination reveals an invalid provision, as explained below. Furthermore, the dispute over whether the City has enforced the residency ordinance, including provisions calling for the creation and operation of investigative and enforcement bodies, remains an actual controversy. Even if some aspects of the dispute may be moot, such as whether the City enforced the ordinance in the years before this action was brought, this matter merits a clear resolution because it presents an issue of public importance and is capable of repetition yet evading review. See *Care and Protection of Rashida*, 488 Mass. 217, 225 (2021). The plaintiffs have a definite interest, as Springfield residents, and Savage additionally as a member of the

concerns the creation and amendment of charters, not ordinances, that standard is inapposite.

SFD, in enforcement of the residency ordinance to the extent that it is valid. This protracted controversy, in part rooted in inconsistent interpretations of the ordinance, must be resolved to alleviate further uncertainty and insecurity by all the parties, as well as City employees, with respect to their rights and obligations in relation to the residency ordinance.

Much of the trial focused on how and why the municipal defendants dealt with the ordinance. It is useful at this juncture to delineate what and who are properly before the court. First, the municipal defendants correctly point out that the SFD is not a proper party. It has no legal existence or potential liability separate from the City, although dismissal is not required. Cf. *St. George Greek Orthodox Cathedral of Western Massachusetts*, 462 Mass. at 121 & n.1 (in action against Springfield Fire Department and City of Springfield, court referred to singular defendant, "city"); *Henschel v. Worcester Police Department*, 445 F.2d 624, 624 (1st Cir. 1971) ("If a police department may be successfully sued it is the city which will pay; the result is the same as suing the city").

Second, there is no basis for naming the FCA as a defendant in this declaratory judgment action by the taxpayers under G. L. c. 43B, § 14(2), or by Savage individually. Nothing in the evidence or law supports an inference that the FCA could be liable for any of the purported wrongs complained of in this action. Although the City asserts that its approach to the residency requirement is circumscribed by the City's collective bargaining agreement (CBA) with the FCA, that does not make the FCA liable for any failure by the City to comply with the ordinance.

Third, the plaintiffs request a declaration as to the validity of the residency ordinance as amended between 1995 and May 2016. The voluminous evidence regarding ordinances, arbitration decisions, and other actions taken outside that time frame are not material and will

only be referenced if helpful to provide some context.

Finally, Springfield's residency ordinance was amended in 1995, 2003, 2009, 2013, and 2016. The parties presented no evidence at trial of precisely what amendments took effect between 1995-2013. The only complete version of the residency ordinance in evidence is Exhibit 3, encompassing Art. II, §§ 73-8 through 73-17, and which notes the sections which were amended in 2013 and 2016. With respect to versions of the ordinance in effect from March 17, 1995, to September 9, 2013, the parties have submitted only summaries and opinions with excerpts but not complete text.⁵ On this record, the court is unable to ascertain the scope of the residency ordinance requirement or its exceptions during that 18-year period. As a result, the analysis here is based solely on the pertinent portions of the ordinance as it appears in Exhibit 3.

III. The Residency Ordinance

A. Residency Requirement, Exception, and Promotions Under §§ 73-8 and 73-9

The residency ordinance in effect between September 9, 2013, through at least 2016 is located in Chapter 73, Article II, §§ 73-8 through 73-17, of the Revised Ordinances of the City of Springfield.⁶ Section 73-8 reads in pertinent part:

"A. Except as provided for in this article, every person first employed by the City of Springfield on or after March 17, 1995, shall, within 12 months of the start of employment, be a resident of the City of Springfield and shall not cease to be a resident during his employment by the City.

⁵ When William Mahoney, the City's Director of Human Resources and Labor Relations, was asked during trial if Exh. 3 was essentially what had been in effect in 2009 when he began his position for the City, he replied, "It was certainly different, particularly with the waiver provision which was much different." On November 14, 2008, the City's Senior Legal Counsel Harry Carroll wrote in a memorandum that "it is the Law Department's opinion that members of the Fire Department hired, except those who were hired before [August 1, 1978], must comply with Springfield's residency ordinance." Carroll's opinion cited the version of the ordinance which became effective on March 17, 1995.

⁶ Chapter 73 is entitled City Personnel and within it is Article II which contains the residency requirements for City personnel.

....

C. Notwithstanding the provisions of this article, all employees employed by the City of Springfield on March 17, 1995, shall be considered to have fully complied with the residency provisions of this article."

Section 73-9 governs how the residency requirement relates to promotions and provides:

"Except as provided for in this article, all persons promoted by the City on or after March 17, 1995, shall be or within one year of such promotion become a resident of the City as defined herein. Failure to do so shall be determined to be a voluntary termination of employment."

(Emphasis supplied).

The prefatory clause of § 73-9, "[e]xcept as provided for in this article," signals that the residency requirement for promotions is not absolute and that one or more exceptions in the article apply. If the intent were that all persons promoted after March 17, 1995, had to become residents within a year of their promotion, the words "[e]xcept as provided for in this article" would have been unnecessary. It is unreasonable to read this clause as merely superfluous or inadvertent. Therefore, at issue is what exception in the article applies. The "article" refers to Article II, which covers the entire residency ordinance in §§ 73-8 through 73-17.

The one express exception in Article II appears in § 73-8 C. Its effect is that despite the provisions of Article II imposing a residency requirement, every person already employed by March 17, 1995, is considered to have complied fully with the residency provisions of "this article." Because "this article" encompasses the promotion provision of § 73-9, the residency ordinance can be fairly construed to exempt persons promoted on or after March 17, 1995, if they were already employed by the City on March 17, 1995, because those persons are deemed to be in full compliance with all of the provisions in Article II pursuant to § 73-8. I therefore

conclude that § 73-9 exempts persons hired before March 17, 1995 from the residency requirement attached to promotions.

Consequently, to show that the City promoted employees in contravention of § 73-9, there would have to be evidence that the persons promoted were not Springfield residents after their grace period expired and that they were originally hired after March 17, 1995. There was no such evidence presented at trial with respect to any SFD employee. Instead, the City and the plaintiffs shared the faulty premise that all promoted persons, irrespective of when they were hired, were required under § 73-9 to be Springfield residents. At trial, Savage therefore focused on the employees' dates of promotion and offered evidence and argument about how, if at all, the City and Conant acted on information that promoted nonresidents had not moved to Springfield within the grace period.⁷ The sparse evidence of employees' original dates of hire showed that the persons identified as promoted in the SFD were all either hired before March 17, 1995, or were Springfield residents. Accordingly, those promotions have not been shown to run afoul of the residency ordinance.⁸

B. The Ordinance in Relation to CBAs and Civil Service Law § 73-11

Section 73-11 of the ordinance addresses collective bargaining agreements and civil

⁷ In a 2011 memorandum, William Mahoney, the City's Director of Human Resources and Labor Relations, stated that "employees hired before March 17, 1995, are exempted by the ordinance itself, unless they have been promoted since that date." Rather than terminating employees who the City believed were violating the residency ordinance, the City typically negotiated resolutions with the FCA and granted extensions of the grace period. The FCA challenged any threatened discipline and argued that the CBA incorporated a residency ordinance which had long been repealed. In contrast to the City, its co-defendant Conant, as former Commissioner of the SFD, conducted a civil service hearing on whether a district chief and later deputy chief, Glenn Guyer, could be disciplined for not residing in Springfield. Conant's reading of the residency ordinance aligned with the reasoning in this decision; he concluded from the exception in § 73-8 that Guyer had not violated the residency ordinance because he was hired in 1987, long before March 17, 1995.

⁸ Therefore, Savage's claim of harm of lost promotion opportunities has not been substantiated on this record.

service positions, and reads in relevant part:

"A. To the extent permissible by law, no collective bargaining agreement hereafter entered into by the City of Springfield shall contain any provision contrary to the provisions hereof, nor shall the absence of any provision with respect to the residency of any person hired after the date of such contract be deemed to prevent enforcement of this article.

"B. To the extent permissible by Chapter 31 of the General Laws, every examination held to establish a civil service list for employment by the City of Springfield shall be restricted to the City of Springfield residents."⁹

The parties have pointed to no conflict between § 73-11 and any State statutes. Because both paragraphs of § 73-11 are explicitly prefaced with "to the extent permissible" by law, no such material conflict exists.

C. Annual Residency Certification, Processing and Termination Under § 73-10

Section 73-10 directs in pertinent part that:

"A. Upon taking employment with the City, and annually on February 1 thereafter, every person subject to this article shall file with his or her department head, or like officer, a certificate signed under the pains and penalties of perjury, stating his or her name and place of residence. A copy of every such certificate shall be transmitted by the department head or like officer to the Residency Compliance Commission within five business days of filing.

"B. Upon receipt of a certificate indicating a place of residence not within the City, or if no such certificate is filed, the department head or like officer shall forthwith strike the name of the employee from the payroll[;] that person shall cease to be employed by the City, and the department head or like officer shall give notice of his or her action to the City Clerk, who shall transmit the same to the City Council, Mayor, and Collector/Treasurer. This subsection shall not apply to employees exempted from the residency ordinance as provided for in this article.

....

"D. Every employee shall be furnished a copy of the residency ordinance when hired and

⁹ Unlike § 73-9, § 73-11B is not prefaced with an exception. The general exception for persons originally hired before March 17, 1995, presumably applies, but the lack of that exception clause in this provision creates some ambiguity.

annually thereafter "

The testimony and documentary evidence at trial left no doubt that during the relevant time period, the City simply ignored § 73-10A. Savage credibly testified that in the decades of his employment with the SFD and up to 2016, he was rarely asked to complete a residency certificate and he may have signed one 30 years ago. Savage received a memorandum dated December 1, 2011, from William Mahoney, the City's Director of Human Resources and Labor Relations since 2009. In that memorandum, Mahoney instructed City departments to "forward these certificates for review, processing and filing in the employee's personnel file." Savage's union at that time, Local 648, advised its members not to complete the certificates.

Apart from the 2011 memorandum, there is no support for Mahoney's testimony that his office issued annual notices to employees to complete and return the certificates, or that his staff would "then make[] sure that they're on file." The City produced no evidence that at any time before this action was commenced in 2016, it had received or filed signed residency certifications or taken any further action as set forth in § 73-10A.

In contrast to § 73-10A, § 73-10B raises concerns because it mandates the automatic termination of employees when the department head receives a residency certificate stating that an employee not exempted from the residency ordinance does not live in Springfield or when the employee does not file a certificate. This automatic termination does not permit any investigation into whether the employee is still within a grace period. It is directly at odds with the establishment and operation, under the residency ordinance, of both a Residency Compliance Commission and Residency Compliance Unit, both of which have investigative authority as discussed below. See §§ 73-15 and 73-16. Section 73-10B cannot be read harmoniously with §§

73-15 and 73-16. Furthermore, as explained in Mahoney's testimony, the City cannot summarily terminate any civil service employee without affording that employee the notice and hearing required by civil service law, or the option of appealing a disciplinary action through a grievance under the CBA. These sharp conflicts render § 73-10B invalid and unenforceable. The remaining provisions in § 73-10 are not in conflict with any State statute.

Although the plaintiffs cannot, on their amended complaint, obtain relief in the nature of mandamus, they are entitled to a declaration of the parties' rights and obligations under § 73-10. That section obligates the City: (1) to ensure that employees subject to Art. II receive and file annual residency certificates by February 1st; (2) to transmit copies of completed certificates within five business days of receipt to the Residency Compliance Commission; and (3) to give every employee a copy of the residency ordinance when hired and annually thereafter. The City does not have a right to strike an employee from the payroll without complying with the investigative processes established in §§ 73-15 and 73-16 and with applicable civil service laws.

D. Residency Compliance Commission Under § 73-15

Section 73-15 provides in relevant part:

"A. There shall be a Residency Compliance Commission ('Commission') comprising seven Commissioners, five to be appointed by the Mayor . . . with one being a City union representative, and two other members, one of whom shall be the City's affirmative action officer and one of whom shall be the President of the City Council, or such other Councilor designated from time to time by the Council President.

"B. The purpose of the Commission shall be to investigate and make findings relative to compliance with Springfield's residency ordinance.

"C. All Commissioners, with the exception of the Council President, shall serve co-terminus with the Mayor and any vacancies shall be filled by the Mayor for the unexpired term. The Commission shall select annually a Commissioner as Chairperson. . . .

"D. The Commission shall have the power to investigate, conduct hearings, administer

oaths, take testimony of any person under oath and in connection therewith to require the production for examination of any documents, books, papers, or evidence relating to any other matter in question or under investigation by the Commission. The Commission may appoint from within or without its membership a hearing officer to conduct particular hearings upon a majority vote of the Commission. The employees who are the subject of a hearing shall be afforded notice and an opportunity to provide testimony, witnesses, documents and to have counsel present.

"E. Should the Commission, after hearing, find that an employee who is subject to the residency ordinance does not reside within the City, . . . the Commission shall issue its findings to the employee's department head, who shall recommend appropriate action to the Mayor

"F. Semi-annually, the Commission shall provide a written report to the Mayor, who shall file a copy with the City Council. This report shall include all investigations and findings by the Commission with respect to the residency ordinance."

None of this has materialized. No trial witness was aware of the Residency Compliance Commission ever existing, nor is there a shred of documentary evidence of its operation in any manner as set forth in this section.¹⁰ There is no dispute that § 73-15 is valid. Nothing in it conflicts with any State law. As set forth above, to the extent it conflicts with § 73-10B, the latter provision is without effect.

The plaintiffs are entitled to a declaration that, in accordance with § 73-15: (1) the mayor has a duty to appoint five members of the Commission and thereafter to fill vacancies on it; (2) the City Council's president has a duty to participate in the Residential Compliance Commission or designate another Councilor to do so; (3) the City, through its affirmative action officer, has a duty to act as a commissioner; (4) the Residency Compliance Commission, once formed, has a duty to carry out the work as set forth in § 73-15B, D and F; and (5) the City, through its

¹⁰ In his November 2008 memorandum, the City's Senior Legal Counsel Harry Carroll wrote that on June 15, 1995, the mayor appointed to the Residency Compliance Commission five commissioners, each for a term expiring on January 1, 1996; that since January 1, 1996, no one had been appointed to the Residency Compliance Commission; and that there was no evidence at any time of it having been operational.

department heads, has a duty to recommend appropriate action to the mayor when the Residency Compliance Commission finds that an employee who is subject to the residency ordinance does not reside within Springfield.

E. Residency Compliance Unit Under § 73-16

Section 73-16 of the ordinance concerns the formation and duties of the Residency Compliance Unit. Section 73-16 states in pertinent part:

"A. There shall be a Residency Compliance Unit ('Compliance Unit') within the Personnel Department, which shall also have the power to conduct investigations of City employees and officers where there is reason to believe that an employee or officer may be in violation of the residency ordinance. The Springfield Police Department shall serve as investigators for both the Compliance Unit and Commission.

"B. The Compliance Unit shall ensure, pursuant to the residency ordinance, the filing of residency affidavits and submission of additional documentation to verify residency. It shall also serve as a vehicle whereby employees and the general public may report those who are believed to be in violation of the residency ordinance. Where questionable claims of residency exist, the Compliance Unit shall forward such to the Compliance Commission for further investigation as delineated in § 73-15"

I do not credit Mahoney's testimony that in 2013 or at any relevant time there has been a Residency Compliance Unit as required by § 73-16. Mahoney described the Residency Compliance Unit as comprised of himself, the assistant personnel director, and the human resources generalist. He testified that the Residency Compliance Unit meets once a month and tracks employees who have a one-year grace period to move into Springfield. Mahoney was unable to give any date when the Residency Compliance Unit began to meet and could only say "it's been a while." When asked how many employees' residency and grace periods he was following between 2009 and 2016 to check for compliance, he replied, "I couldn't tell you." He testified that he was unaware of any employees being terminated between 1995 and 2016 due to noncompliance with the residency ordinance. He stated that in his entire tenure, beginning in

2009 and to the time of trial in 2020, the Residency Compliance Unit had conducted only three investigations and that he did not use the SPD to investigate as mandated by § 73-16. Although the ordinance tasks the Residency Compliance Unit with ensuring that employees file annual residency certificates and submit verifying documentation of residency, there is no documentation of any such certificates being filed during the relevant period. If the Residency Compliance Unit were operational during that period, there would be some documentary proof of the residency certificates, investigations by the SPD, and residency verifying documentation. The City has produced no such evidence. I find that the City did not, at any time before this action was filed, create and operate a Residency Compliance Unit.

Nothing in § 73-16 conflicts with any State statute. Under this section, the City has an obligation to establish the Residency Compliance Unit and to have it function as set forth in the ordinance.¹¹

ORDER

For all the foregoing reasons, it is hereby **ORDERED**, **ADJUDGED** and **DECLARED** that:

(1) Section 73-10B of the residency ordinance is invalid and unenforceable, and all other sub-parts of § 73-10 and all other sections of the residency ordinance are valid and enforceable.

(2) The exception set forth in § 73-8 for employees hired before March 17, 1995, applies to § 73-9 and exempts those employees from the requirement of being residents in order to be promoted regardless of the date of promotion.

(3) Pursuant to § 73-10, the City of Springfield has the following obligations: (1) to ensure that employees subject to Art. II receive and file annual residency certificates by February 1st; (2) to transmit a copy of completed certificates within five business days of receipt to the

¹¹ Other questions raised by the parties need not be addressed, either because they are obviated by the analysis above of §§ 73-8 and 73-9 or because they are beyond the scope of this action under G. L. c. 43B, § 14(2), and G. L. c. 231A.

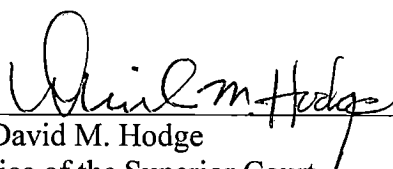
Residency Compliance Commission; and (3) to give all of its employees a copy of the residency ordinance when they are hired and annually thereafter.

(4) The City of Springfield does not have a right to strike an employee from the payroll without complying with the processes set forth in §§ 73-15 and 73-16 and with any applicable civil service laws.

(5) In accordance with § 73-15: (a) the Mayor of Springfield has a duty to appoint five persons to the Residency Compliance Commission and thereafter to fill vacancies on it; (2) the ordinance imposes upon the City Council's president a duty to participate in the Residency Compliance Commission or to designate another councilor to do so; (3) the City of Springfield, through its affirmative action officer, has a duty to act as a member of the Residency Compliance Commission; (4) Section 73-15 imposes upon the Residency Compliance Commission, once formed, a duty to carry out the work as set forth in § 73-15B, D and F; and (5) the City of Springfield, through its department heads, has a duty to recommend appropriate action to the Mayor of Springfield when the Residence Compliance Commission finds that an employee subject to the residency ordinance does not reside within Springfield.

(6) Pursuant to § 73-16, the City of Springfield has a duty to establish the Residency Compliance Unit and to have it function and undertake the work as described in § 73-16, including using the Springfield Police Department to conduct investigations.

It is further **ORDERED** that the parties' remaining requests for relief, including for attorney's fees and costs, are **DENIED**.



 David M. Hodge
 Justice of the Superior Court

Dated: December 21, 2021