

2008 Legislative Resolutions

Resolution No. 1

Protect and Strengthen Home Rule

WHEREAS, beginning in 1894 the people of the State of New York have voted repeatedly to approve Constitutional provisions granting broad home rule powers to local governments and corresponding restrictions on the State Legislature to preserve these powers; and

WHEREAS, home rule powers encompass a wide range of subjects including but not limited to: the power to adopt, amend and repeal local laws in the exercise of its functions, powers and duties; the power to share services and act cooperatively with other local governments, the power to acquire real and personal property for its corporate purposes; the power to establish recreational facilities and; the power to dispose of its real and personal property; the power to levy and collect rents, charges, fees and penalties; in a city, village or town, the power to adopt, amend and repeal zoning regulations; and the power to perform comprehensive or other planning work relating to its jurisdiction; and

WHEREAS, the exercise of these powers permits local government leaders to meet the unique and diverse needs of local residents while fostering citizen participation and grassroots involvement in government; and

WHEREAS, New York's diverse communities are best served by honoring the principles of home rule as set forth in the State Constitution, Local Government Bill of Rights, Statute of Local Government and the Municipal Home Rule Law; **NOW THEREFORE BE IT**

RESOLVED that the Association of Towns calls upon our state leaders to preserve and strengthen home rule; and BE IT FURTHER

RESOLVED that the Association of Towns will strongly oppose any state initiative to eliminate or weaken New York's long-standing tradition of home rule and local government authority.

Resolution No. 2

Mandate Relief

WHEREAS, local governments are in partnership with the State and Federal Government to protect and preserve the health, safety and welfare of the American people; and

WHEREAS, a partnership requires collaboration in order to effectively accomplish these goals; and

WHEREAS, the imposition of tax-shifting unfunded State and Federal mandates (commonly occurring in the areas of public works, procurement, personnel management, provision of local service, environmental quality enhancements, and loss of local tax base) represents a barrier to effective collaboration and good governance; and

WHEREAS, the growing expense of tax-shifting unfunded mandates, both individually and collectively, places financial burdens on local governments and ultimately the taxpayer, and has in some instances forced local governments to drastically underfund crucial local services such as road maintenance, public safety, and recreational and cultural services; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the President and Congress to enhance the Unfunded Mandates Reform Act of 1995 (UMRA; P.L. 104-4) to expand the definition of the term “unfunded mandate” and to fully fund Federal programs administered at the state and local level; and **BE IT FURTHER**

RESOLVED that the Association of Towns calls upon the Governor and the New York State Legislature to enact comprehensive mandate relief legislation that would take into consideration the following among other relief measures: (1) inventory and fully fund existing and future mandates and (2) require all future legislation to include comprehensive local fiscal impact notes.

Resolution No. 3

Increase in Justice Court Funding

WHEREAS, town justice courts provide an essential service that is primarily funded by local real property taxes; and

WHEREAS, the state established reimbursement fund (General Municipal Law [GML] §99-1), designed to assist local governments with the operational expenses of justice courts, has not been amended to reflect an increase in operational expenses for the past 10 years; and

WHEREAS, the New York State Police recently discontinued the practice of prosecuting and plea-bargaining traffic violations in town justice courts, placing a burden on local governments to provide prosecutors for traffic violations, further increasing operational expenses of the court; **NOW THEREFORE BE IT**

RESOLVED that the Association of Towns requests legislative action to increase GML, §99-1 reimbursement fees to assist local taxpayers in funding justice court operational expenses.

Resolution No. 4

Fund the Unfunded MS4 Mandate

WHEREAS, the United States (U.S.) Environmental Protection Agency (EPA) promulgated the Phase II Stormwater regulations in 1999 requiring owners and operators of small Municipal Separate Storm Sewer Systems (MS4s) in urbanized areas to obtain a permit to discharge stormwater to the waters of the U.S.; and

WHEREAS, the EPA requires MS4s in New York State to obtain permit coverage under the New York State Pollutant Discharge and Elimination System (SPDES) General Permit for Stormwater Discharges from MS4s (GP-02-02); and

WHEREAS, the MS4 permit requires regulated MS4s to develop and fully implement a Stormwater Management program by 2008; and

WHEREAS, Stormwater Management programs must contain appropriate management practices in each of the six minimum control measures (Public Education and Outreach; Public Participation and Involvement; Illicit Discharge Detection and Elimination; Construction Site Runoff Control; Post-Construction Runoff Control and Pollution Prevention and Good Housekeeping); and

WHEREAS, to date, Phase II Stormwater regulations are an unfunded mandate; and

WHEREAS, the U.S. EPA has estimated MS4s will spend \$3.00 - \$60.00 per capita to comply with Phase II Stormwater regulations; and

WHEREAS, New York State has not sufficiently funded the Environmental Protection Fund (EPF) to assist communities in the development and implementation of their MS4 programs, and that EPF funding is distributed in the form of competitive grants and therefore not guaranteed to all regulated MS4 municipalities; **NOW THEREFORE BE IT**

RESOLVED, that to guarantee that the program is implemented and enforced uniformly throughout the State, the Association of Towns calls for fully funding the development, implementation and enforcement of this program.

Resolution No. 5

Highway Transportation Funding

WHEREAS, local highways and bridges make up 85% of our State's highway system; and,

WHEREAS, recent local road system studies continue to identify a multi-billion dollar shortfall in funding of local highways and bridges; and

WHEREAS, upgrading the State's 90,000 miles of county and town roads to meet the American Association of State Highway Transportation Officials (AASHTO) minimum standards would cost in excess of \$9.7 billion dollars; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the Governor and Legislature to continue their support of the Consolidated Highway Improvement Program (CHIPS) and to explore every way possible to increase highway aid.

Resolution No. 6

Local Road Classification

WHEREAS, American Association of State Highway Transportation Officials (AASHTO) develops minimum standards for local highways; and

WHEREAS, many rural town roads are unpaved and do not meet minimum AASHTO standards; and

WHEREAS, upgrading the State’s 90,000 miles of county and town roads to meet the AASHTO minimum standards would cost in excess of \$9.7 billion dollars; and

WHEREAS, there is a shortage of available state and federal funding for local road and bridge maintenance; and

WHEREAS, the proper designation of qualified local roads as minimum maintenance or low volume will simultaneously result in lower real property taxes and a more efficient use of state and federal resources while ensuring the public with safe travel; and

WHEREAS, other states such as North Dakota and Minnesota have enacted provisions authorizing and regulating low volume and minimum maintenance road standards; and

WHEREAS, there is a need to provide an appropriate legal and technical basis for the decisions of those local highway superintendents, town boards and their engineering professionals regarding the maintenance, reconstruction and construction of low volume and minimum maintenance local roads; and

WHEREAS, the New York State Local Road Classification Task Force developed guidelines that incorporate a design process for rehabilitation projects on low traffic roads, including recommendations for pavement width, bridge width and roadside clear zones; **NOW THEREFORE BE IT**

RESOLVED that the Association of Towns urges the Governor and the Legislature to direct the Department of Transportation to review NYS Local Road Classification Task Force recommendations regarding local road classification standards and enact appropriate enabling authority for local road classifications which will permit local governments to rationally reduce to more appropriate levels, the costs of maintenance and repair of properly designated low volume and minimum maintenance roads.

Resolution No. 7

Speed Limits on Town Roads

WHEREAS, current provisions of the Vehicle & Traffic Law, §1662-a authorize only certain towns (i.e., suburban towns and those with over 50,000 in population – approximately 8.6% of towns) to set speed limits on all highways within a town other than state highways maintained by the state, while all cities and villages regardless of classification or population set their own speed limits; and

WHEREAS, the NYS Department of Transportation can take as much as two years to process requests for speed limit reductions and has, in most instances, declined to reduce speed limits on town highways when requested to do so by local officials; and

WHEREAS, town governments are better positioned to work with their citizens to set speed limits on town roads and more likely to be responsive to their residents' concerns; and

WHEREAS, town officials are legally required to set speed limits based upon the same engineering standards and traffic investigation techniques as the State DOT, cities and villages are required to employ; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns urges the Legislature and Governor to extend to all towns the option – through adoption of a local law – to assume responsibility and authority to set speed limits on town roads within their respective jurisdictions, within the limits as defined in §1662-a of the Vehicle & Traffic Law, and so long as those roads have been functionally classified by the Department of Transportation as local roads.

Resolution No. 8

Preserve and Strengthen Local Government's Role in the Siting of Energy Generation Facilities

WHEREAS, the New York State Public Service Commission (PSC) adopted a new renewable energy policy which includes Wind Energy Facilities (WEFs) on September 22, 2004 that requires 25 percent of the state's electricity to be supplied from renewable energy sources by 2013; and

WHEREAS, the proper regulation of the siting and installation of WEFs is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public; and

WHEREAS, WEFs have the potential to cause significant aesthetic, environmental, and quality of life impacts if not properly sited, because of their large size, lighting, noise and shadow flicker effects; and

WHEREAS, local governments have successfully developed, implemented and administered local WEFs siting laws and policies with the input and guidance of local

taxpayers, residents, business and agricultural representatives, environmentalists, energy generators, planners and lawyers; and

WHEREAS, Article X of the Public Service Law (PSL), which set forth the siting procedure to construct and operate major power generation facilities with a capacity of 80 megawatts or more expired December 31, 2002 thereby requiring electric generating project developers to undergo local zoning review and environmental review pursuant to the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law); **NOW THEREFORE BE IT**

RESOLVED, the Association of Towns calls upon the Governor, State Legislature and State Agencies to develop new laws and regulations that will preserve local authority over the siting of WEFs and that will provide local government officials from a host municipality with a seat on the New York State Board on Electric Generation Siting and the Environment (Siting Board).

Resolution No. 9

Municipal Deposits in Credit Unions and Thrift Institutions

WHEREAS, the General Municipal Law of the State of New York requires that local governments designate one or more banks or trust companies for the deposit of public funds; and

WHEREAS, many state and local governments throughout the United States expressly allow for the deposit of public funds in credit unions, savings banks, and savings and loan associations (hereinafter referred to as “thrift institutions”); and

WHEREAS, the State of New York remains one of the few states where local governments are statutorily prohibited from using thrift institutions for municipal deposits; and

WHEREAS, using local institutions for municipal deposits fosters local economic development because local tax dollars will be used by local institutions to invest in local businesses, mortgages and community development projects; and

WHEREAS, using local thrift institutions fosters local government efficiency; and

WHEREAS, like banks, credit unions are insured by the National Credit Union Insurance Fund, a federal agency comparable to the Federal Deposit Insurance Company; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the Governor and the New York State Legislature to pass legislation that amends all applicable state laws to allow local government to deposit public funds in credit unions and thrift institutions.

Resolution No. 10

Reform the Real Property Tax and Assessment System

WHEREAS, towns primarily rely on real property tax revenues to fund important government services; and

WHEREAS, New York's property tax burden is higher than the national average, thereby impacting our standard of living and economic vitality; and

WHEREAS, a contributing factor to high real property taxes is the volume of legislation passed each year granting particular property owners either a partial or full exemption from the payment of real property taxes, a practice that has continued unabated in the most recent (2007) State Legislative Session; and

WHEREAS, the legislative trend to grant exceptions from established taxable status dates, either at local option or statewide, contributes to the increase in real property taxes paid by homeowners and small businesses; and

WHEREAS, it is essential that the cumulative long-term impact of real property tax exemptions be studied in New York particularly in light of the retroactive exemptions for specific properties annually enacted and the expanding scope of existing exemptions; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns requests the Governor and Legislature to study, define and enact a uniform, well-defined approach to exemption and taxable status date legislation that will provide state funding for any state-mandated or encouraged exemption programs and protect local property tax revenues.

Resolution No. 11

Reform Condominium Assessments

WHEREAS, Real Property Law, §339-y has been interpreted by courts to limit an assessor's method of establishing a condominium assessment to the income approach, resulting in the assessment for each unit significantly under market value, sometimes by as much as 50% or more; and

WHEREAS, further abuse of section 339-y now includes attempts by developers to take large tracts of land, construct large single-family houses on one or two acres and, instead of simply subdividing the property, establish a condominium with two classes of common areas, a limited common area (consisting of all the parcels surrounding each residence), which is for the exclusive use of the owner and occupant of the "condominium unit", and one general common area consisting only of the roadways within the development; and

WHEREAS, by structuring ownership of the property in the manner just described, section 339-y limits the assessing unit to setting assessments on all the units as if the property were a single parcel, resulting in a steep reduction in what the assessment would otherwise be; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns again calls upon the Legislature and the Governor to repeal Real Property Law, §339-y so as to provide equal treatment for all types of residential housing and to prevent the continuing abuses of section 339-y as described above.

Resolution No. 12

Preservation of Local Taxation on Certain Lands Owned by the State of New York

WHEREAS, a recent New York State Supreme Court decision (*Dillenburg v. State*, 2007 N.Y. Slip Op. 27548) held that the current provisions of law authorizing taxation of certain state land are unconstitutional; and

WHEREAS, stopping the State of New York from paying real property taxes on lands owned by the State would have a devastating economic impact on many local governments and school districts across the state, including, but not limited to, those located within the Adirondack and Catskill Parks; and

WHEREAS, local taxpayers would lose more than \$69 million in annual revenue in the Adirondack Park and nearly \$12 million in annual revenue in the Catskill Park, currently paid by the State of New York; and

WHEREAS, the State authorized acquisition of private lands in the Adirondack and Catskill Parks as a benefit to all state residents and, as such, bears the responsibility for sharing in the continued costs associated with those properties, such as road maintenance and local emergency response protection; and

WHEREAS, it is in the interest of all taxpayers, local governments and school districts across the state that the Legislature develop a uniform policy for the taxation of state-owned lands while preserving the existing authority to do so as provided by law;
NOW THEREFORE BE IT

RESOLVED, that the Association of Towns supports the present authority for the taxation of certain state lands, particularly in the Adirondack and Catskill Parks, and further urges the State to develop a uniform policy for the taxation of other state lands.

Resolution No. 13

GML 207-C Disability Benefits for Law Enforcement Reform

WHEREAS, law enforcement personnel are entitled to payment of municipal compensation benefits including, payment of salary, fringe benefits and all medical costs when they are injured in the line of duty pursuant to General Municipal Law (GML), §207-c and these payments are non-taxable and can continue for years or even decades until there is recovery, a disability retirement or attainment of retirement age; and

WHEREAS, the New York Court of Appeals decided (*Matter of Theroux v. Reilly et al*) that all law enforcement officers who are injured or fall ill in the performance of their duties, regardless of the duties performed or the nature of the injury, are entitled to the payment of the full benefits provided by GML, §207-c; and

WHEREAS, the Office of the New York State Comptroller has the final determination as to when a law enforcement officer is eligible for a disability retirement and historically has been reluctant to issue disability retirements to law enforcement officers who are receiving section 207-c benefits; and

WHEREAS, law enforcement officers have been known to stay on municipal payrolls receiving 207-c benefits for multiple years thereby filling a roster spot in a department that could be filled by a healthy law enforcement officer; and

WHEREAS, this interpretation of GML, §207-c by New York Court of Appeals will substantially increase municipal compensation costs and create a great hardship to taxpayers at all municipal government levels; **NOW THEREFORE BE IT**

RESOLVED, that the New York State Association of Towns supports legislation to amend General Municipal Law, §207-c to require disability retirement benefits to be extended to any law enforcement officer who has been receiving GML, §207-c benefits for a period of 36 months without the ability to return to work.

Resolution No. 14

Restore and Secure Equity in Collective Bargaining

WHEREAS, one out of every eight New York workers is a unionized government employee with more than a million New Yorkers represented by public sector unions; and

WHEREAS, employee salaries and benefits account for the majority of municipal government operating expenses; and

WHEREAS, the Taylor Law (officially the Public Employees Fair Employment Act) was enacted in 1967 to promote a balance in the relationship between public employees and their employers; and

WHEREAS, legislation, case law, arbitration awards and administrative rulings by the Public Employee Relations Board (PERB) have lead to inequity in the collective bargaining process; **NOW THEREFORE BE IT**

RESOLVED that the Association of Towns calls upon the New York State Legislature, Governor and Public Employee Relations Board to restore equity in the collective bargaining process by taking measured steps including but not limited to: (1) reform or repeal “compulsory binding arbitration” by including the ability to pay - without raising taxes - as a priority consideration for binding arbitration panels and requiring higher employee contributions towards benefits such as health care costs; (2) reform or repeal the “Triborough Amendment” which makes it an “improper practice” for an employer to refuse to continue

all of the terms of an expired agreement until a new agreement is negotiated; (3) resist employer penalty legislation (e.g. S. 3178 [2006] which would have imposed a penalty on employers found to be acting in bad faith by requiring the taxpayers to provide a one percent increase in salaries for all members of a collective bargaining unit) without any corresponding penalty for unions or their members found to be bargaining in bad faith.

Resolution No. 15

Preserve Local Control Over Active and Retiree Health Insurance Benefits

WHEREAS, GASB 45 requires GAAP (Generally Accepted Accounting Principles) compliant municipalities to account for non-pension, post employment benefits such as retiree health care costs in their financial reports; and

WHEREAS, many towns choose to provide health insurance benefits, although provision of health insurance benefits to town officers, employees and retirees is permissive (General Municipal Law, §92-a); and

WHEREAS, towns currently have the authority to adjust health insurance benefits upon reasonable notice and subject to any applicable collective bargaining agreements; and

WHEREAS, many towns are facing double-digit increases in health care costs while their budgets are already overburdened with mandated costs such as for pension payments, workers' compensation and the like; and

WHEREAS, real property taxes in New York are among the highest in the nation;
NOW THEREFORE BE IT

RESOLVED, that the Association of Towns is opposed to any State Legislation (e.g. S. 6030/A.8829 (2007)) that would affect a local government's control over the provision of health care benefits to its active or retired officers and employees.