

BEFORE THE DES MOINES CITY COUNCIL

IN RE OBJECTION TO)	MEMORANDUM OF AUTHORITIES
THE NOMINATION PETITION)	IN SUPPORT OF JOE GATTO'S
AND AFFIDAVIT OF CANDIDACY)	RESIDENCY IN THE FOURTH
OF JOE GATTO)	WARD

COMES NOW Joe Gatto, through the undersigned, and submits this memorandum of authorities in support of his residence for the Des Moines City Council Fourth Ward.

I. BECAUSE JOE GATTO'S HOME IS 15 EAST CRESTON AVENUE AND HE INTENDS TO STAY THERE INDEFINITELY, HE IS A RESIDENT OF THE FOURTH WARD OF THE CITY OF DES MOINES

A. Applicable Legal Principles

The qualifications to be a candidate for elective city office are set forth in Iowa Code section 376.4, which provides in pertinent part:

376.4 Candidacy.

1. *a.* An eligible elector of a city may become a candidate for an elective city office by filing with the city clerk a valid petition requesting that the elector's name be placed on the ballot for that office. . . .

b. The petitioners for an individual seeking election from a ward must be residents of the ward at the time of signing the petition. An individual is not eligible for election from a ward *unless the individual is a resident of the ward at the time the individual files the petition* and at the time of election.

Iowa Code § 376.4(1)(a),(b) (emphasis added). Chapter 376, however, provides no definition for the term "resident." Unfortunately, there is no uniform definition of the term found in the Iowa Code or court decisions. Iowa Op. Atty Gen. 720 (June 18, 1980). Instead, it "is an elastic word with varied statutory meanings, dependent upon the context of the statute in which it is used and the purpose and object to be attained." *Kroblin Refrigerated Xpress, Inc. v. Iowa Ins. Guar. Ass'n*, 461 N.W.2d 175, 177 (Iowa 1990); *see also Democko v. Iowa Dep't. of Natural Res.*, 840 N.W.2d 281, 289 (Iowa 2013) ("We recognize the concept of residency can have different meanings depending upon

context”). Recently, in *Root v. Toney*, 841 N.W.2d 83 (Iowa 2013), the Iowa Supreme Court explained:

When the term “resident” is undefined in the statute, it becomes an ambiguous term requiring statutory construction to determine its legal meaning. We are to “seek a reasonable interpretation . . . that will satisfy the objectives of the statute.”

Id. at 91.

The Iowa Supreme Court’s decision in *Paulson v. Forest City Community Sch. Dist.*, 238 N.W.2d 344 (Iowa 1977), is the most analogous case to the residency objection at issue here. In *Paulson*, a group of taxpayers and voters in a school district challenged whether college students were qualified voting residents even though their hometowns were outside of the school district. *Id.* The voter qualification statute defined residence as “the place in which [the voter] declares is his home with the intent to remain there permanently or for a definite or indefinite or undeterminable length of time.”

Id. at 347 (citing Iowa Code section 47.4(4)). The parties stipulated to the following facts:

- The students considered their hometowns or family home to be outside the district;
- They considered the district to be home while attending college;
- They were unmarried, and their parents did not live in the district;
- They were fulltime students, not employed in the district during the summer, and undecided where they would stay after graduation; and
- They attended church outside the district, obtained driver’s licenses outside the district, and their income tax addresses were outside the district.

Id. at 348-49. The stipulation, the Court observed, “equally sustains” arguments that the students have more than one home. *Id.* at 349. In such case, the voter’s own declaration of residence “tip[s] the scales in favor of their qualification to vote.” *Id.*

The *Paulson* decision sets forth several relevant principles for the residency determination of candidates for city office. First, the underlying object of the residency requirement is the maintenance of a political community. *Id.* at 347. Second, statutes that regulate voting and election procedures “must be construed liberally” in favor of giving effect to a voter’s choice. *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978) (citing *Paulson*, 238 N.W.2d at 348)). Third, when a

person's home might arguably be either of two places, the person's intent expressed by his declaration will "tip the scales" toward residency in any one location. *Paulson*, 238 N.W.2d at 349.

B. Analysis

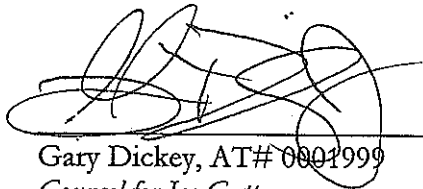
The objection filed in this matter is simply wrong on multiple levels to contend that Joe Gatto is not a resident of the Fourth Ward. To begin with, it bears repeating that residency, for purposes of city elections, is determined "at the time the individual files the petition." Iowa Code § 376.4(1)(b). There can be no meaningful dispute that Gatto was a "resident" of the Fourth Ward as of February 6, 2014, under any reasonable understanding of the term. For starters, he declared under oath in his affidavit of candidacy that 15 East Creston Avenue was his home. Iowa Op. Att. Gen. 169 (1980) ("in cases where an individual arguably has two residences, the declaration is likely to be held conclusive"). Second, Gatto is the sole owner of the property at that address, and he has applied for the homestead tax credit at that location. In doing so, he declared his intent to occupy the "home for six months or more in the year for which the credit is claimed." Most importantly, he regularly sleeps overnight at 15 East Creston, and did so prior to filing his petition. *State v. Savre*, 129 Iowa 122, 129 N.W. 387, 389 (1905) ("as between the place where one rooms and sleeps and the place where he obtains his meals, without other facts indicating the contrary, the former must be regarded as his residence"). Additionally, Gatto's Iowa driver's license lists 15 East Creston Avenue as his residence. Further, he pays the property taxes and utilities for the home and accepts his mail at that address.

Even setting aside the location of his physical dwelling, Gatto has deep civic ties to the Fourth Ward. He owns Café Baratta's which is located in the ward. For this reason, he spends a significant part of his day working in the ward and tending to the affairs of the business. A large number of his employees and the patrons of his businesses reside in the Fourth Ward. He is a member of the Indianola Hills Neighbors association. Most importantly, he is registered to vote at

15 East Creston Avenue. Indeed, Gatto has voted in the past three elections from that address. On January 21, 2014, he participated in the Iowa caucus for Precinct 69. Even more, his fellow neighbors elected him to be a delegate to represent his precinct at the Polk County Convention. Surely, if Gatto is qualified to participate in the elections of public representatives of the Fourth Ward, he is no less able to be a candidate himself. *State v. Haubrich*, 248 Iowa 978, 982, 83 N.W.2d 451, 453 (1957) (explaining that the privileges extended to an eligible elector include the twin rights of voting and holding public office).

CONCLUSION

Because Joe Gatto has demonstrated his residency to be 15 East Creston Avenue, he respectfully requests this matter be summarily dismissed.



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