

## MUNICIPAL ELDER LAW: A MINNESOTA PERSPECTIVE

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*The field of elder law has developed dramatically over the past several decades and is primarily regarded as a creature of state and federal law. This area of law will be of paramount importance in the coming years as the elderly population continues to increase dramatically. Indeed, nearly every community in the United States will undoubtedly be impacted in some way by the influx of older residents. Notably, however, the effect of an aging society will impact each local community differently. For these reasons, Professors Kim Dayton and Israel (Issi) Doron sought to examine the role that municipal elder law has and could play in local government. In exploring this unique avenue for the advancement of elder rights, the authors conducted a study on municipal elder law in Minnesota communities to determine the extent to which local governments have attempted to embrace the field of elder law.*

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*Based on their findings, the authors concluded that many municipalities have failed to utilize local ordinances to advance elder rights. Nevertheless, the authors argue that there should be significant development of municipal elder law that focuses on the special issues facing older persons. To that end, the authors make a number of recommendations. First, Professors Dayton and Doron recommend that elder rights organizations invest greater resources in the expansion of local laws that promote elder rights. Second, the authors call on local elder law practitioners to better utilize local legislation that exists and to act as agents for the drafting of additional local ordinances dealing with elderly citizens. Finally, Professors Dayton and Doron recommend that local politicians and administrators be better educated about the benefits of using local ordinances to advance social change in the field of elder law.*

## I. Introduction

Elder law in the United States has historically been regarded as the domain of federal and state law in relatively equal parts. Federal law is preeminent in such matters as income security in retirement (Social Security, Supplemental Security Income, employee pensions); basic health care for older persons (Medicare); and most aspects of discrimination against older persons and those with disabilities in employment, housing, and other arenas. State law dominates in the areas of elder abuse and neglect, guardianship and conservatorship, probate matters, and the regulation of private insurance. In some areas, such as planning for long-term care and nursing home regulation, both federal and state law have comparably significant roles.

Moreover, in an increasingly globalized world, many advocates for older persons are looking principally to international law as the means to expand the legal rights of elders.<sup>1</sup> This trend is evident in the current debates on issues such as the need for an international convention on the rights of older persons<sup>2</sup> or the application of the Hague Convention for the Protection of Adults to situations involving the elderly.<sup>3</sup>

This Article considers an alternative approach by asking whether local law can be the future of elder law. Scholarly discussions of law

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1. See Israel Doron & Itai Apter, *International Rights of Older Persons: What Difference Would a New Convention Make to the Lives of Older People?*, 11 MARQ. ELDER'S ADVISOR 367, 368 (2010); see also Israel Doron, *From National to International Elder Law*, 1 J. INT'L AGING L. & POL'Y 43, 43-45 (2005).

2. See Diego Rodriguez-Pinzon & Claudia Martin, *The International Human Rights Status of Elderly Persons*, 18 AM. U. INT'L L. REV. 915, 1007-08 (2003).

3. See Aimee R. Fagan, Note, *An Analysis of the Convention on the International Protection of Adults*, 10 ELDER L.J. 329, 330-31 (2002).

and aging have largely overlooked the role that local governments might play in defining, expanding, and protecting the rights of older persons. As one of the authors has previously observed:

[E]xisting approaches to Elder Law fail to recognize that their legal “ideologies” are most often developed and implemented at the level of the local authorities, municipalities, or communities . . . . Furthermore, such novel local initiatives ought to be substantiated through available legal frameworks. In this regard, it is up to the local attorneys specializing in Elder Law to take significant steps to guarantee that these initiatives are upheld through innovative local legislation. It is imperative to all the existing approaches to Elder Law to acknowledge the importance of the local legislature in order to materialize their jurisprudential rationale. Ultimately, this opens up a broad range of activities that remain to be effectively implemented by attorneys in the field of municipal Elder Law.<sup>4</sup>

Notwithstanding this challenge, there is little in the elder law literature on the role of local law in shaping the rights and privileges of older persons.<sup>5</sup>

This Article comprises an empirical exploration of the field of local or municipal elder law in the United States.<sup>6</sup> It reports on the re-

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4. Israel Doron, *Elder Law: Current Issues and Future Frontiers*, 3 EUR. J. AGEING 60, 64 (2006).

5. Outside the United States, there are two examples of attempts to examine the reality of municipal elder law. For a Canadian analysis, see Israel Doron, *Time for Municipal Elder Rights Law: An Anglo-Canadian Perspective*, 27 CAN. J. ON AGING 301 (2009) [hereinafter Doron, *Municipal Elder Rights*]. For an Israeli analysis, see ISRAEL DORON, TAUBE CTR. FOR SOC. POL’Y, ELDER RIGHTS AND LOCAL GOVERNMENT 1 (2006) [hereinafter DORON, ELDER RIGHTS AND LOCAL GOVERNMENT], available at [http://taubcenter.org.il/tauborgilwp/wp-content/uploads/H2006\\_Elderly\\_Rights.pdf](http://taubcenter.org.il/tauborgilwp/wp-content/uploads/H2006_Elderly_Rights.pdf) (in Hebrew) (examining the role of services for the elderly within the local authority).

6. The term “local government” can refer to a wide range of entities that have specific authority to regulate rights and duties at the sub-state level. Thus:

[T]he Census Bureau recognizes five basic types of local governments. Of these five types, three are general-purpose governments: [c]ounties, [m]unicipalities, [and] [t]ownships. The other two types are special-purpose governments: [s]pecial districts [and] [s]chool districts. County, municipal, and township governments are readily recognized and generally present no serious problem of classification. However, legislative provisions for school district and special district governments are diverse. Numerous single-function and multiple-function districts, authorities, commissions, boards, and other entities, which have varying degrees of autonomy, exist in the United States. The basic pattern of these entities varies widely from state to state. Moreover, various classes of local governments within a particular state also differ in their characteristics.

sults of a pilot study, conducted in Minnesota, to determine the extent to which local government units in Minnesota have, or have not, embraced the field of elder rights.<sup>7</sup> Part II of the Article outlines the general principles that define the scope of local government power generally and provides examples of how local governments typically exercise their authority with regard to the rights of individuals and particular demographic groups. Part III describes the research design and methodology and summarizes the quantitative and qualitative findings. Part IV contains conclusions and recommendations for further research and reform.

## II. Law, Aging, and Local Government Regulation

### A. An Overview of Local Governmental Regulatory Authority

Just as the U.S. Constitution and federal statutes allocate legal powers and authority between the federal government and the states, so do state constitutions and state legislative enactments dictate the nature and scope of local government power.<sup>8</sup> Two general models define the role of local governments vis-à-vis the state in terms of legislative powers. The first model, known as “Dillon’s rule,”<sup>9</sup> contem-

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*Lists & Structure of Governments: Population of Interest, Criteria for Classifying Governments*, U.S. CENSUS BUREAU, [http://www.census.gov/govs/go/population\\_of\\_interest.html](http://www.census.gov/govs/go/population_of_interest.html) (last updated Nov. 4, 2009). In this Article, references to “local government” may encompass any of these entities, although the primary focus of the research discussed in this Article was cities and towns (townships). Use of the terms “municipal government” and “municipal laws (ordinances)” are reserved for references to city or town governments and laws (ordinances).

7. It is second in a series of articles resulting from research on this topic supported by a grant from the Borchard Foundation on Law and Aging. The first article posits the theory that the future of elder law is localism and describes a theoretical model local ordinance that would address a broad range of rights and privileges benefiting older persons. See generally Israel Doron, *Municipal Elder Law: An Exercise in Legal Futurism*, 37 WM. MITCHELL L. REV. 80 (2010). A third article (in progress), will discuss the findings of a national survey of municipal ordinances and by-laws that was based on the methodology and insights developed in the Minnesota study.

8. See generally Daniel B. Rodriguez, *Localism and Lawmaking*, 32 RUTGERS L.J. 627 (2001).

9. See Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 WIS. L. REV. 83, 84, 100 (1986). The term “Dillon’s rule” is rooted in the decision in *City of Clinton v. Cedar Rapids*, when Judge Dillon, irked by abuses of the public fisc, stated tersely that “Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which

plates that local governments have only those powers that have been specifically and unambiguously granted to them by the state legislature, that are necessarily or fairly implied from the grant of authority, and that are indispensable to the purposes of state government itself.<sup>10</sup> When determining if a particular challenged act of government is within local authority, a court must resolve any doubts against the local action.<sup>11</sup> Since the latter half of the nineteenth century, Dillon's rule has represented the dominant approach to local government power.<sup>12</sup>

Over time, however, a second model—the “home rule” doctrine—has made some inroads.<sup>13</sup> The home rule doctrine contemplates that units of local government have wide-ranging powers to regulate and enjoy a significant measure of protection from state legislative control.<sup>14</sup> Home rule is based on a principle of localism—citizens should have closer access to and control over the governing power affecting their social and economic liberties.<sup>15</sup> When a state authorizes home rule, through either a constitutional provision or legislative action, local governments receive a broad and for the most part general grant of governing power and enjoy a significant degree of autonomy from state legislative control.<sup>16</sup>

Under both Dillon's rule and in home rule jurisdictions, local government units have generally used their legislative powers in particular substantive areas. For example, they regularly generate revenue through their authority to tax residents. Local property taxes are an important economic tool to finance the activities and services provided by local governments.<sup>17</sup> Many county and municipal govern-

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they cannot exist.” *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455, 475 (Iowa 1868).

10. Williams, *supra* note 9, at 98–99.

11. *Id.*

12. See generally JESSE J. RICHARDSON, JR. ET AL., BROOKINGS INST., IS HOME RULE THE ANSWER? CLARIFYING THE INFLUENCE OF DILLON'S RULE ON GROWTH MANAGEMENT (2003), available at [http://www.brookings.edu/reports/2003/01metropolitanpolicy\\_richardson.aspx](http://www.brookings.edu/reports/2003/01metropolitanpolicy_richardson.aspx) (“Thirty-nine states employ Dillon's rule to define the power of local governments.”).

13. See, e.g., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK, at ix (Dale Krane et al. eds., 2001); Amasa M. Eaton, *The Right to Local Self-Government*, 13 HARV. L. REV. 441, 454 (1900); Michael Monroe Kellogg Sebree, *One Century of Constitutional Home Rule: A Progress Report?*, 64 WASH. L. REV. 155 (1989).

14. HOME RULE IN AMERICA, *supra* note 13, at ix.

15. See *id.*

16. *Id.*

17. See generally 71 AM. JUR. 2D *State and Local Taxation* § 67 (2010) (describing the nature and source of local governments' power to tax). Regarding the special

ments levy local sales taxes that are added to statewide sales taxes; these incremental local taxes finance general or specific programs within the local jurisdiction.<sup>18</sup> Localities also generate income from licensing fees and similar revenue schemes that are not always characterized as taxation but serve basically the same function.<sup>19</sup> Taxation by local governments raises critical issues implicating social justice and constitutionally protected rights as well as the redistribution of wealth. Property taxes and sales taxes are notoriously regressive, and their impact on middle- and lower-income individuals is far more harsh economically than an income tax.<sup>20</sup> The local power to tax thus has direct potential both to further and to hinder individual rights.

Another area in which local governments are almost universally empowered to regulate is land use. Land use control and zoning ordinances allow municipalities to determine the demographics of populations living in certain areas and how certain areas are used. Regulations setting permissible uses within zoned areas (e.g., residential, commercial, light industrial) or defining minimum lot sizes or setbacks thus impact the basic human rights of all persons.<sup>21</sup>

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burdens of property taxes on older residents, see Robert C. Christopherson, Note, *Missing the Forest for the Trees: The Illusory Half-Policy of Senior Citizen Property Tax Relief*, 13 *ELDER L.J.* 195, 196-97 (2005); Matthew J. Meyer, Note, *The Hidden Benefits of Property Tax Relief for the Elderly*, 12 *ELDER L.J.* 417 (2004).

18. In Minnesota:

Local governments are generally prohibited by statute from imposing sales taxes. Nevertheless the legislature has authorized, through special legislation, a number of local sales taxes. These local taxes have differed significantly in their characteristics and administration. In 1997, the legislature adopted model statutory language regarding imposition and administration of new and existing local sales taxes. In 2008, counties were granted statutory authority to impose local sales taxes to fund transportation projects.

PAT DALTON, RESEARCH DEP'T, MINN. H.R., LOCAL SALES TAXES IN MINNESOTA 1 (updated Jan. 2012), available at <http://www.house.leg.state.mn.us/hrd/pubs/localsal.pdf>.

19. See, e.g., MINNEAPOLIS, MINN., CODE OF ORDINANCES, ch. 64, § 30(b) (2011).

20. See, e.g., Brian Roach, *Progressive and Regressive Taxation in the United States: Who's Really Paying (and Not Paying) Their Fair Share* (Global Dev. & Env't Inst., Working Paper No. 03-10).

21. For discussions of the impact of particular zoning regulations on older persons' ability to live in the community, see William H. Grogan, Note, *The Tension Between Local Zoning and the Development of Elderly Housing: Analyzing the Use of the Fair Housing Act and the Americans with Disabilities Act to Override Zoning Decisions*, 33 *SUFFOLK U. L. REV.* 317 (2000); Michael Kling, Note, *Zoned Out: Assisted-Living Facilities and Zoning*, 10 *ELDER L.J.* 187 (2002).

Other matters that are quintessentially (although not exclusively) within the sphere of local governments' lawmaking authority include protecting civil rights, establishing and enforcing building codes, assuring access to transportation, and protecting the public safety through law enforcement agencies and fire departments. Thus, a city council might adopt a human rights ordinance that prohibits discrimination against classes of persons who are not otherwise protected by federal or state laws, or a building code that requires all new construction to have certain acoustical qualities. Whatever the substantive area of regulatory action, the manner in which a local government exercises its authority will have a profound impact on the general quality of life available to individual citizens and the community as a whole.<sup>22</sup>

### B. Local Law as a Vehicle for Social Change

The broad authority that local governments typically enjoy—either as an aspect of a Dillon's rule delegation of specific regulatory powers or through the exercise of home rule jurisdiction—to provide for the general welfare has not always been used to effect positive social change or protect disadvantaged groups. To the contrary: local government and the municipal arena have long been the stage for gross discrimination against and social exclusion of underprivileged social groups. Obvious examples include local school districts' maintenance of segregation in public elementary and secondary schools<sup>23</sup> and the use of zoning ordinances as a vehicle to exclude undesirable groups such as the mentally ill from particular residential areas.<sup>24</sup> In recent years, anti-immigration sentiment has been channeled into a wide range of local laws that seek to restrict employment and housing options for undocumented aliens and purport to adopt English as a community's official language.<sup>25</sup>

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22. See generally Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990).

23. For a general discussion of the means by which school districts have historically enforced and maintained segregation, see Christine H. Rossell & David J. Armor, *The Effectiveness of School Desegregation Plans, 1968–1991*, 24 AM. POL. QUARTERLY 267, 267 (1996).

24. See, e.g., *City of Cleburne, Tex. v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985).

25. See, e.g., Kristina M. Campbell, *Local Illegal Immigration Relief Act Ordinances: A Legal, Policy, and Litigation Analysis*, 84 DENV. U. L. REV. 1041, 1042–43 (2007);

It is true that the U.S. Constitution and state constitutional provisions play a role in limiting intentional discrimination via local ordinance against members of so-called suspect classes. Thus, the Supreme Court has occasionally invalidated exclusionary zoning practices that are expressly aimed at members of particular ethnic or racial groups.<sup>26</sup> For example, the Third Circuit Court of Appeals recently struck down a local ordinance that criminalized the act of renting to illegal immigrants—but on the basis of the Federal Constitution’s supremacy clause, not because of its discriminatory nature.<sup>27</sup> As a general matter, federal courts have been reluctant to undermine the actions of local government bodies engaged in legislative activity on constitutional grounds. Proving discriminatory intent can be difficult when an ordinance is facially neutral, and direct evidence of local legislators’ discriminatory intent is seldom available.<sup>28</sup> Moreover, the term “suspect classes” does not include many groups that have experienced widespread discrimination, including older persons<sup>29</sup> and those with disabilities.<sup>30</sup> Local laws regulating economic behavior are subject to a rational basis test that in almost all cases means that a challenged ordinance will be upheld.<sup>31</sup> The end result is that constitutional challenges to municipal ordinances are difficult to win.

Although counties, municipalities, and other local government entities arguably have a less than stellar overall record with regard to legislating to accomplish inclusive social and economic agendas, some instances of what might be called social justice localism do exist. For instance, hundreds of towns and cities across the country have adopted broadly protective human rights ordinances that go well beyond the statutory protections from discrimination addressed in federal and state laws. Such ordinances might bar public and private sector dis-

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Michael Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27, 34 (2007).

26. *E.g.*, *Hunter v. Erickson*, 393 U.S. 385 (1969).

27. *See generally* *Lozano v. City of Hazleton*, 620 F.3d 170 (3d Cir. 2010).

28. *See generally, e.g.*, Note, *The Inadequacy of Judicial Remedies in Cases of Exclusionary Zoning*, 74 MICH. L. REV. 760 (1976) (discussing the many difficulties courts face when approaching seemingly exclusionary zoning laws).

29. *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976) (stating that age is not a suspect class).

30. *City of Cleburne, Tex. v. Cleburne Living Center, Inc.*, 473 U.S. 432, 432 (1985) (holding that mental retardation is not a suspect class).

31. *Id.* at 450 (invalidating permit requirement under rational basis test because “requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded”).



crimination based not only on race, ethnicity, or religious belief but also on age, disability, sexual preference, marital or familial status, or the receipt of public assistance.<sup>32</sup> Another example of the important role that local governments can play occurs with the living wage movement.<sup>33</sup> Although federal law sets a minimum wage for most workers,<sup>34</sup> a full-time employee receiving the federal minimum wage earns only about thirty-four percent of the income necessary to support a family's basic needs.<sup>35</sup> About half of the states have established a state minimum wage that is incrementally higher than the national minimum wage.<sup>36</sup> Living wage activists have largely targeted their efforts at the local level. "The living wage movement attempts to pass local ordinances to raise the wage floor for specified groups of workers. . . . [Living wage laws] require firms that receive public funds to pay wages above the minimum, ranging from \$7 and \$12 or more per hour."<sup>37</sup> According to one source, at least 123 local governments reflecting a wide range of demographic and geographic characteristics have enacted such ordinances.<sup>38</sup>

Similarly, local governments have been instrumental in the effort to advance the rights of same-sex couples through ordinances

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32. For discussions of local human rights movements, see Milton Greenberg & Pamela H. Rice, *Municipal Protection of Human Rights*, 1952 WIS. L. REV. 679 (1952); Stacy Laura Lozner, Note, *Diffusion of Local Regulatory Innovations: The San Francisco CEDA W Ordinance and the New York City Human Rights Initiative*, 104 COLUM. L. REV. 768 (2004); Chad A. Readler, Note, *Local Government Anti-Discrimination Laws: Do They Make a Difference?*, 31 U. MICH. J.L. REFORM 777 (1998).

33. See generally Deborah M. Figart, *Ethical Foundations of the Contemporary Living Wage Movement*, 28 INT'L J. SOC. ECON. 800 (2001); David B. Reynolds & Jen Kern, *Labor and the Living Wage Movement*, in PARTNERING FOR CHANGE: UNIONS AND COMMUNITY GROUPS BUILD COALITIONS FOR ECONOMIC JUSTICE 67 (David B. Reynolds, ed., 2004). For a highly accessible general account of the living wage movement, see Jon Gertner, *What is a Living Wage*, N.Y. TIMES MAG., Jan. 15, 2006, <http://www.nytimes.com/2006/01/15/magazine/15wage.html>.

34. 29 U.S.C. § 206 (2006).

35. See WIDER OPPORTUNITIES FOR WOMEN, COMING UP SHORT: A COMPARISON OF WAGES AND WORK SUPPORTS IN 10 AMERICAN COMMUNITIES 4 (2004), available at <http://www.insightcced.org/uploads/publications/wd/ComingUpShort.pdf>.

36. See *Wage and Hour Division: Minimum Wage Laws in the States*, U.S. DEP'T LABOR (Jan. 1, 2012), <http://www.dol.gov/whd/minwage/america.htm>.

37. Heidi Swarts & Ion Bogdan Vasl, *Which U.S. Cities Adopt Living Wage Ordinances?*, 47 URB. AFF. REV. 743, 745 (2011), available at <http://uar.sagepub.com/content/47/6/743>.

38. NAT'L EMP'T LAW PROJECT, LOCAL LIVING WAGE ORDINANCES AND COVERAGE, available at <http://www.nelp.org/page/-/Justice/2011/LocalLivingWageOrdinancesandCoverage.pdf?nocdn=1> (last updated Dec. 6, 2010).

extending many of the benefits of marriage to domestic partners.<sup>39</sup> In 1985, the city of West Hollywood, California became the first governmental entity at any level to pass a domestic partnership registry providing legal recognition to same-sex couples.<sup>40</sup> Such localism can often help pave the way to more comprehensive legislative and executive action at the national and state levels. In some cases, local laws serve to mitigate the impact of state-level laws or actions intended specifically to restrict rights and privileges. For example, Florida voters, in a 2008 referendum, passed an amendment to the Florida constitution banning same-sex marriage.<sup>41</sup> In early 2011, the City of South Miami exercised its home rule powers to approve a domestic partner ordinance conferring a number of important civil rights and economic benefits on registered domestic partners.<sup>42</sup>

### C. Elder Law in the Municipal Arena

The practice specialty known as elder law has developed quite dramatically in the United States since the mid 1980s.<sup>43</sup> Over the past twenty-some years, its parameters have become relatively well defined, and its unique nature acknowledged in the academic,<sup>44</sup> private,<sup>45</sup> and public<sup>46</sup> legal arenas. As noted above, however, elder law is principally regarded as a creature of state and federal law. The potential of local law not merely to fill the interstices, but to expand

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39. See, e.g., Kenneth D. Wald et al., *The Politics of Gay Rights in American Communities: Explaining Antidiscrimination Ordinances and Policies*, 40 AM. J. POL. SCI. 1152, 1153 (1996); Craig A. Bowman & Blake M. Cornish, Note, *A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances*, 92 COLUM. L. REV. 1164, 1188–95 (1992); Michael A. Woods, Comment, *The Propriety of Local Government Protections of Gays and Lesbians from Discriminatory Employment Practices*, 52 EMORY L.J. 515, 515–16 (2003).

40. W. HOLLYWOOD, CAL., MUN. CODE §§ 2.84.010–100 (1996), available at [http://qcode.us/codes/westhollywood/view.php?topic=2-4-2\\_84](http://qcode.us/codes/westhollywood/view.php?topic=2-4-2_84).

41. FLA. CONST. art. I, § 27.

42. SOUTH MIAMI, FLA., CODE OF ORDINANCES ch. 19, § 19-5 (2011), available at [http://library.municode.com/HTML/11587/level2/COOR\\_CH19DOPA.html](http://library.municode.com/HTML/11587/level2/COOR_CH19DOPA.html).

43. See generally Lawrence A. Frolik, *The Developing Field of Elder Law: A Historical Perspective*, 1 ELDER L.J. 1–10 (1993).

44. See, e.g., Nina A. Kohn & Edward D. Spurgeon, *Elder Law Teaching and Scholarship: An Empirical Analysis of an Evolving Field*, 59 J. LEGAL EDUC. 414, 414–15 (2010); Rebecca C. Morgan, *Teaching Elder Law*, 40 STETSON L. REV. 1, 1–2 (2010).

45. See generally NAT'L ACAD. ELDER LAW ATT'YS, <http://www.naela.org> (last visited Apr. 22, 2012).

46. See generally *Commission on Law and Aging*, A.B.A., [http://www.americanbar.org/groups/law\\_aging.html](http://www.americanbar.org/groups/law_aging.html) (last visited Apr. 18, 2012).

legal rights, has been largely ignored.<sup>47</sup> This is unfortunate, for two reasons.

First, the phenomenon of our aging society is and will continue to be experienced very differently in disparate local communities. National statistics regarding the growth of the aging population are widely reported and discussed in scholarly literature and the popular media alike. National—and even state-specific—statistics, and discussions of the impact of an increasingly diverse, aging society on public programs such as Social Security, Medicare, Medicaid, and public and private pension systems, mask the wide variations in how the nation's many local communities will experience this phenomenon. For example, in 2000, the nation's elderly population (persons sixty-five and older) comprised about 12.4% of the total population.<sup>48</sup> At the local level, however, huge variations existed with regard to the percentage of the total population that falls into this demographic category. Across the United States, the county-wide proportion of elderly ranged (in 2000) "from a low of 2 percent in Chattahoochee County, Georgia . . . to a high of 35 percent in Charlotte County, Florida."<sup>49</sup> Among the nation's largest (100,000+) cities, the total percentage of residents age sixty-five and older was only 3.8% in Gilbert, Arizona, in contrast with 21.5% in Clearwater, Florida.<sup>50</sup> Large variations in the racial and ethnic makeup of local communities also exist. This diversity will likely result in differences in the types of services available to seniors in their respective communities and the manner in which those services are delivered.

The second reason why it is unfortunate that the potential of local law has been ignored is that many rich and diverse local initiatives providing services for the benefit of older persons appear to exist at the sub-state level outside the framework of formal law. For example, the Communities for a Lifetime project, which has been implemented in several states, "provides information, resources and

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47. *But see* Christopherson, *supra* note 17 (discussing property tax relief for older persons); Kling, *supra* note 21 (discussing zoning ordinances affecting assisted living facilities).

48. Lisa Hetzel & Annetta Smith, *The 65 Years and Older Population: 2000*, CENSUS 2000 BRIEF (U.S. Census Bureau, Wash., D.C.), Oct. 2001, at 1.

49. *Id.* at 6.

50. *Id.* at 6-7; *see also* City and County Data Book 2000, Table C-2: *Cities with 100,000 or More Population in 2000 Ranked by Percent Population 65 Years and Over, 2000 in Rank Order*, U.S. CENSUS BUREAU, <http://www.census.gov/statab/ccdb/cit2061r.txt> (last visited Apr. 18, 2012).

assistance to people engaged in collaborative action to improve the quality of life . . . for people of all ages and abilities.”<sup>51</sup> The services that result from the collaborations developed through the project are usually unknown and unheard of beyond the local community or at least outside the state. Projects such as the Communities for a Lifetime initiative do, however, reveal the potential for local governments to create social, cultural, and legal environments that will benefit Americans as they grow older.<sup>52</sup>

### III. An Empirical Examination of Local Elder Law in Minnesota

#### A. Research Design and Methodology

##### 1. RESEARCH QUESTION AND HYPOTHESIS

The purpose of our pilot study in Minnesota was to develop a framework for conducting a similar study, national in scope, examining the extent to which local governments use their legislative powers in the field of elder law. The general aim of this national study is to evaluate the potential for local governments—primarily municipalities—to develop local law regarding the rights and privileges of older persons and thereby enrich their quality of life.

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51. Minn. Bd. on Aging, Minn. Dep’t of Human Servs., COMMUNITIES FOR A LIFETIME, <http://www.mnlifetimecommunities.org/> (last visited Apr. 18, 2012). The Communities for a Lifetime concept was first introduced in Florida in 1999. Minn. Bd. on Aging, Minn. Dep’t of Human Servs., *About Communities for a Lifetime*, COMMUNITIES FOR A LIFETIME, <http://www.mnlifetimecommunities.org/en/About.aspx> (last visited Apr. 18, 2012). “The goal of the initiative is to help Florida communities become better places for elders to live, providing all residents the opportunity to contribute to the betterment of their communities.” FLA. DEP’T OF ELDER AFFS., BLUEPRINT: COMMUNITIES FOR A LIFETIME 4 (2007), available at <http://www.communitiesforalifetime.org/docs/blueprint2007web.pdf>.

The ongoing process of self assessment and improvement can help a community achieve the following goals: [t]o create an inventory of services and opportunities that promote the independence and quality of life for older adults in the community . . . [and t]o initiate partnerships to promote the development of senior friendly community amenities.

*Id.*

52. See generally, e.g., Lynn A. Baker & Clayton P. Gillette, LOCAL GOVERNMENT LAW 28–31 (3d ed. 2004); Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (2000); Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607 (1997).

Our hypothesis, which derives from similar inquiries into Canadian and Israeli municipal law,<sup>53</sup> was that, in general, local government rarely exercises its legislative authority to regulate or promote older residents' rights.

## 2. NOTE ON LOCAL GOVERNMENT STRUCTURES IN MINNESOTA

Several types of local government units exist in Minnesota; these include counties, cities, townships, school districts, and a plethora of so-called "special districts."<sup>54</sup> Minnesota is nominally a Dillon's rule state: generally speaking, local governments "possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers."<sup>55</sup> The effect of Dillon's rule is considerably mitigated, however, by state constitutional and statutory provisions authorizing local governments to adopt home rule charters.<sup>56</sup> In addition, so-called "statutory cities" in the state are granted broad, general authority to regulate for the "general welfare."<sup>57</sup> Towns (townships) are also authorized to enact laws providing for the general welfare. These broad delegations of power enable most of Minnesota's cities and towns to address very nearly the full range of substantive areas that would be permitted in a home rule jurisdiction.

## 3. SAMPLE

Minnesota has more than 3,500 different local governments, as that concept is defined by the United States Census Bureau.<sup>58</sup> Of these, more than 1,000 are municipalities (cities, towns, or townships).<sup>59</sup> Only municipalities are authorized to exercise the broad

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53. See Doron, *Municipal Elder Rights*, *supra* note 5; DORON, ELDER RIGHTS AND LOCAL GOVERNMENT, *supra* note 5.

54. For general information about Minnesota's 3,500-plus local government units, see *2007 Governments Integrated Directory*, U.S. CENSUS BUREAU, [http://harvester.census.gov/gid/gid\\_07/downloads/all\\_ind\\_st\\_descr.pdf](http://harvester.census.gov/gid/gid_07/downloads/all_ind_st_descr.pdf) (last visited Apr. 18, 2012). Minnesota ranks eighth in the United States in the total number of local government entities. *Id.*

55. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

56. MINN. CONST. art. XII, § 4. For an excellent albeit brief general discussion of local government powers in Minnesota, see DEBRA A. DYSON, MINN. H.R. RESEARCH, STATE-LOCAL RELATIONS (2010), available at <http://www.house.leg.state.mn.us/hrd/pubs/ss/sslcstrel.pdf>.

57. MINN. STAT. § 412.221 (2010).

58. *2007 Governments Integrated Directory*, *supra* note 54.

59. *Id.*

legislative authority encompassed by the home rule doctrine.<sup>60</sup> In selecting a sample, our goal was to account for the following: (1) geog-geography—the sample was structured so as to include localities from all regions of Minnesota; (2) formal legal structure—the sample was chosen as to include both home rule and statutory municipalities; and (3) population and the urban, suburban, or rural nature of the state's population distribution. In addition, all communities ultimately included in the sample provided (4) on-line access to local government by-laws. A total of thirty-three local entities were included in the sample. Table 1 lists and characterizes the actual sample chosen for this pilot study according to the above criteria.

TABLE 1: MUNICIPALITIES IN THE SAMPLE

<b>1st CLASS</b>		
Minneapolis	385,542	Twin Cities/Metro
St. Paul	281,262	Twin Cities/Metro
Rochester	103,486	Southeast
<b>2nd CLASS</b>		
<b>Home Rule:</b>		
Duluth	84,419	Northeast
St. Cloud	59,107	Central
Moorhead	36,804	Northwest
Austin	22,981	Southeast
Lino Lakes	20,569	Twin Cities/Metro
<b>Statutory:</b>		
Burnsville	59,180	Twin Cities/Metro
Woodbury	57,345	Twin Cities/Metro
Mankato	36,500	South
Elk River	23,231	Twin Cities/Metro
Golden Valley	20,516	Twin Cities/Metro

*Continued on next page*

60. See Michele Timmons et al., *County Home Rule Comes to Minnesota*, 19 WM. MITCHELL L. REV. 811, 851–52 (1993). Ramsey County, which includes the city of St. Paul, has home rule authority as a result of enabling legislation enacted in 1987 by the Minnesota legislature and the passage of a home rule charter by voters in 1990. *Id.* at 822–23. None of Minnesota's other eighty-six counties have such authority; their powers are limited as described in MINN. STAT. ch. 373. *Id.* at 823.

TABLE 1—CONTINUED

<b>3rd CLASS</b>		
<b>Home Rule:</b>		
Stillwater	17,970	Twin Cities/Metro
Anoka	17,395	Twin Cities/Metro
Ham Lake	15,259	Twin Cities/Metro
Hutchinson	13,835	Southwest
Bemidji	13,749	Northwest
<b>Statutory:</b>		
Albert Lea	17,402	South
Hibbing	16,237	Northeast
Roseau	15,911	Northwest
Buffalo	14,392	Twin Cities/Metro
Mendota Heights	11,634	Twin Cities/Metro
<b>4th CLASS</b>		
<b>Home Rule:</b>		
Detroit Lakes	8,268	Northwest
Litchfield	6,555	Southwest
International Falls	5,839	Northeast
Ely	3,482	Northeast
Dawson	1,341	Southwest
<b>Statutory:</b>		
Princeton	4,754	Central
Mora	3,518	Central
Melrose	3,247	Central
Chatfield	2,551	Southeast
Badger	459	Northwest

#### 4. THE RESEARCH INSTRUMENTS

We developed two research instruments to collect data. The first instrument was designed to capture quantitative data regarding local laws that specifically or implicitly conferred rights or privileges on older persons or deprived them of such rights or privileges. Appendix 1 contains the template and search terms that were used for data collection. The second instrument, a qualitative tool, comprises interview questions that were posed to relevant local government officials such as city managers. The questionnaire is set out in Appendix 2.

## 5. DATA COLLECTION

To locate all local laws affecting the rights and privileges of older persons in place in the sample municipalities, a computerized search was conducted using a rich variety of keywords.<sup>61</sup> All local regulations identified through the search were categorized as falling within one or more of fifteen areas of law. These categories were based on prior research and reflect the substantive components of the theoretical model ordinance discussed in an earlier article that was written as part of the research project.<sup>62</sup>

The qualitative component of the research entailed an open ended interview of local government officials conducted by phone and transcribed by research assistants. In general, the interviews lasted between fifteen to twenty minutes, and the participants were very cooperative. In most cases, however, the interviewees were unable to provide significant information about the laws in the jurisdiction they represented, perhaps because most of the interviews were cold calls for which the interviewees did not have any opportunity to prepare.

## 6. LIMITATIONS

Limitations of the research design and methodology include the relatively small sample size and the necessary restriction to those local governments that have placed their codes or ordinances online. The methodology was unable to capture situations in which facially neutral ordinances were or could be used to discriminate against older persons. Despite the small sample size, however, the thirty-three cities and towns included within the sample account for almost 27.7% of Minnesota's total population<sup>63</sup> and represent a broad range of geo-

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61. Search terms included the various words for old age (e.g., senior citizens, elderly, older persons, pensioners, and retired persons), words for social institutions and services relevant to older persons (e.g., nursing homes, day-care centers, and hospitals), and words that reflect relevant legal spheres (e.g., elder abuse and neglect, disability, zoning, transportation, social security, and age discrimination). The full (and long) list is on file with the authors.

62. See Doron, *supra* note 7, at 81. The categories suggested in the Doron article included the following: legal institutions and organizations; employment and professional training; financial discounts; physical environment, accommodation and transportation; elder abuse and neglect; health and prevention; education, culture and leisure; and "miscellaneous." *Id.* at 85-97. In this research we expanded and sub-divided some of these categories to create a more accurate picture. For the full list of categories included in this study, see Appendix 1.

63. This statistic was calculated by adding the populations of all communities included in the sample and dividing by the total Minnesota population.



NUMBER 1

MUNICIPAL ELDER LAW 49

graphic regions, population sizes, and statutory types of municipalities in Minnesota.

#### IV. Key Findings

##### A. Quantitative Findings

The quantitative research tool ultimately identified a total of 121 separate local ordinances that could involve or affect the rights of older persons. These ordinances were assigned to one or more of the fifteen conceptual categories described in Appendix 1. Table 2 below shows the total number of localities that have enacted by-laws in the substantive sub-categories of elder law.

TABLE 2: ORDINANCES CATEGORIZED BY LEGAL SUBJECT MATTER (N=33)

	<b>Conceptual Category</b> (See <b>Appendix 1</b> for Actual Questions)	<b>Num. of</b> <b>Localities</b>	<b>% of</b> <b>Localities</b>	<b>Comment</b>
1	Unique legislation (aimed solely at older residents)	3	9%	
2	Unique legal institutions (municipal organs or institutions directed solely at older residents)	9	27%	
3	Statutory definition of old age	3	9%	
4	Taxation	7	21%	Primarily tax deferral/ tax relief
5	Zoning/Urban Planning	25	76%	
6	Transportation/Parking	19	58%	Primarily establishing parking standards for nursing homes

*Continued on next page*

TABLE 2—CONTINUED

7	Crime / Elder Abuse	4	12%	All indirect crimes (e.g. trespassing into a nursing home)
8	Financial relief	9	27%	
9	Housing	16	48%	Primarily definitions of types of housing/ references to state/federal programs. No direct provision of affordable housing for the elderly
10	Employment	6	18%	All anti-discrimination; no incentives to hire older workers
11	Accessibility (specifically aimed at older residents)	2	6%	
12	Health	3	9%	All as part of defining nursing homes/ day-care centers; No actual health services for the elderly
13	Recreation/Leisure	5	15%	
14	Other	9	27%	

Table 2 shows that the majority of Minnesota municipalities exercise their broad legislative powers mainly within traditional historical spheres of local government authority, such as urban planning, taxation, parking, and housing. In those substantive areas that are of particular concern and importance to older persons—for

example, elder abuse and neglect, providing access to health services, or promoting employment of older workers—municipalities do virtually nothing. Only a handful of localities have enacted specific ordinances solely or primarily benefiting their senior residents or have established unique statutory institutions or administrative positions intended to address the interests or needs of their older population.

Table 3 presents the data from another perspective, summarizing the distribution of elder-friendly regulations within specific categories. It shows that most localities had enacted ordinances falling within one to five of the fifteen possible substantive categories; only five localities (St. Paul, St. Cloud, Moorhead, Hutchinson, and Minneapolis) had adopted ordinances in at least six areas, while no municipality had adopted ordinances in more than eleven categories.

TABLE 3: DISTRIBUTION OF ALL ORDINANCES, BY CATEGORY (N=33)

<b>Number of categories/Percent that by-laws were enacted</b>	<b>Number of Localities</b>	<b>% of Localities</b>
1-5 / 3-33%	28	85%
6-10/ 34-66%	5	15%
11-16/67-100%	0	0%

Finally, Table 4 comprises a summary of the number of local ordinances by size, geography, and type:

TABLE 4

<b>Size</b>	<b>No. of BL</b>	<b>% BL</b>	<b>Geographic</b>	<b>No.</b>	<b>%</b>	<b>Type</b>	<b>No.</b>	<b>%</b>
>100,000 (N=3)	22	48%	Twin Cities/Metro(N=12)	56	31%	Home Rule (N=18)	77	63%
20,000-100,000 (N=10)	48	32%	Central (N=4)	14	23%	Statutory (N=15)	44	37%
10,000-20,000 (N=10)	31	21%	Northeast (N=4)	11	18%			
<10,000 (N=10)	20	13%	Southeast (N=3)	9	20%			
			Northwest (N=5)	12	16%			
			South (N=2)	6	20%			
			South-West (N=3)	7	16%			

Table 4 reveals a correlation between the size of the municipality and the enactment of local ordinances explicitly implicating older persons. In the state's larger cities, elder-friendly ordinances exist in a larger number of categories. From a geographic perspective, although most regions share a similar percentage of by-laws, the largest cities had the highest percentages. As for the type of city, although it seems that home rule municipalities are more involved in enacting local ordinances that relate to their older residents, this is not accurate due to the fact that the big cities (i.e., St. Paul, Minneapolis, and Rochester) are all home rule and have the largest number of local ordinances in the field. Once we exclude these cities, the table shows that whether a city is a home rule or statutory municipality is not statistically significant.

Tables 2, 3, and 4 provide a general picture of municipal efforts to extend rights and privileges to the elderly population.

## **B. Representative Local Ordinances**

### **1. LEGAL DEFINITIONS OF ELDERLY AND SIMILAR CONCEPTS**

A review of some representative ordinances identified through the research offers additional insights. One interesting aspect of our findings was the variation in local definitions of old age. Although there were almost no general local ordinances defining the concept, specific ordinances pertaining to housing, zoning, or taxation sometimes did contain definitions. For example:

Duluth:

Sec. 50-1.26. Elderly person. An individual, married or single, 62 years of age or more.<sup>64</sup>

Buffalo:

Sec. 11.2. Elderly Senior Citizen Housing. A public agency owned or controlled, or legally restricted multiple dwelling building with open occupancy limited to persons over sixty (60) years of age.<sup>65</sup>

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64. DULUTH, MINN., LEGIS. CODE ch. 50, art. I, § 50-1.26 (in the definitions section of chapter 50, regulating land use).

65. BUFFALO, MINN., CITY ORDINANCES § 11.02, subdiv. 2, no. 52 (effective Aug. 27, 1985).

Minneapolis:

Tit. 7, Ch. 139.20. <sup>66</sup>*Elderly person.* A person who is at least fifty-five (55) years of age.

## 2. UNIQUE INSTITUTIONS OR ADMINISTRATIVE POSITIONS

Only two municipalities in the sample appear to have established unique entities or positions that are specifically intended to address the interests of older residents or provide a dedicated forum in which they may voice their point of view and influence the decision making process within the municipality. One of these cities is the state's largest home rule municipality, Minneapolis. In 1974, the Minneapolis City Council established a Senior Citizen Advisory Committee (SCAC) to bring senior citizens' concerns to the attention of the mayor and city council.<sup>67</sup> The committee's purposes are:

- To advise the Mayor and City Council of the existence of situations and problems concerning senior citizens.
- To suggest or recommend action to deal with these situations.
- To advise and suggest programs or activities of value to the City generally.
- To advise and suggest programs or activities of particular value to senior citizens.
- To serve as liaison or as an additional channel of communication between the Mayor's Office, the City Council and the senior citizen community.
- To develop long and short range goals and objectives on an annual basis.
- To work closely with the Minneapolis Senior Ombudsman.

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66. MINNEAPOLIS, MINN., CODE OF ORDINANCES, Tit. 7, Ch. 139.20 (effective Dec. 16, 2011).

67. *Senior Citizen Advisory Committee*, CITY OF MINNEAPOLIS, <http://www.minneapolismn.gov/ncr/boards/scac/index.htm> (last updated Dec. 14, 2011). For an account of the activities of this entity, see *Senior Citizen Advisory Committee Meeting Minutes*, CITY OF MINNEAPOLIS (March 10, 2011), [http://www.minneapolismn.gov/www/groups/public/@health/documents/webcontent/convert\\_268551.pdf](http://www.minneapolismn.gov/www/groups/public/@health/documents/webcontent/convert_268551.pdf).

To act at all times within the province of this charge for the general interest of Minneapolis senior residents, rather than in the specific interests of any group or individual.<sup>68</sup>

The city of St. Cloud, the state's eighth largest municipality, has taken a somewhat different approach. St. Cloud's administrative code, which establishes the city's departmental structure and defines the duties of employees within those departments, provides:

Ch. 1, § 105:31. Department of Community Services. The Department of Community Services will be headed by the Director of Community Services and will have responsibilities for facilitating initiatives, identifying resources and coordinating services that strengthen neighborhoods, invite citizen participation, and address people's basic human needs. The Department of Community Services will consist of the following divisions.

Subd. 1. The Aging Services Division will be headed by the Director of Aging Services with responsibilities for program operations at Whitney Senior Center and in partnership with other city services and community agencies addressing the needs of the city's aging population through advocacy, programming and education.<sup>69</sup>

The state of Minnesota has over 400 senior centers funded by the Older Americans Act and other sources.<sup>70</sup> St. Cloud is the only city among the sample that has created a division of local government and a position within its administrative structure specifically for the purpose of delivering aging services, to run a senior center, and to serve as a liaison to other aging-related organizations.

### 3. ZONING AND URBAN PLANNING

Land use control is one of the traditional areas in which local governments have had authority, either through specific delegations or under the home rule doctrine, to regulate and restrict personal and economic rights. Our study revealed that, in fact, this sphere was one of the few in which a significant share of municipalities in the sample had exercised their legislative powers in a manner specifically implicating older persons. These ordinances generally concern the location of housing and institutional facilities serving the elderly, through ref-

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68. *Senior Citizen Advisory Committee, supra* note 67 (describing history and function of SCAC).

69. ST. CLOUD, MINN., CODE OF ORDINANCES ch.1, § 105:31, subd. 1 (2007).

70. See *FY 2007 Profile of State OAA Programs: Minnesota*, ADMIN. ON AGING, [http://www.aa.gov/aoaroot/program\\_results/SPR/2007/Profiles/mn.pdf](http://www.aa.gov/aoaroot/program_results/SPR/2007/Profiles/mn.pdf) (last visited Apr. 18, 2012).

erences in zoning ordinances to homes for older persons, board-and-care facilities, nursing homes, and other specific housing designed particularly for older residents. An example of such zoning by-laws can be found in the city of Buffalo, which has established a zoning district called a "health care facility district."<sup>71</sup> By creating such districts, the city aims to encourage local clusters of health care related businesses and residential facilities that are within close proximity of one another.<sup>72</sup> Among the permissible conditional uses within these health care facility districts is the construction of both nursing homes and elderly senior housing:<sup>73</sup>

Section 11.65, Subd. 4. Conditional Uses. The following are conditional uses in a "B-6" District . . .

B. Nursing homes and similar group housing accommodating seventeen or more individuals . . . [and]<sup>74</sup>

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C. Elderly senior housing . . .<sup>75</sup>

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71. BUFFALO, MINN., CITY ORDINANCES § 11.65 (effective Apr. 26, 2001).

72. "The purpose of the 'B-6' Health Care Facility District is to provide for the establishment of exclusive medical service developments and directly supportive facilities." *Id.* § 11.65, subdiv. 1 (2010).

73. Conditional use requires the issuance of a separate permit authorizing the particular facility or business to be operated within the health care facility district. *Id.* § 11.65, subdiv. 4.

74. *Id.* § 11.65, subdiv. 4(B). Conditions that must be met by proposed nursing homes located within a health care facility district to receive a conditional use permit:

1. Side yards are double the minimum requirements established for this district and are screened in compliance with Section 11.17, Subd. 7.
2. Only the rear yard shall be used for play or recreational areas. Said areas shall be fenced and controlled and screened in compliance with Section 11.17, Subd. 7.
3. The site shall be served by an arterial or collector street of sufficient capacity to accommodate traffic which will be generated.
4. All signing and informational or visual communication devices shall be in compliance with the provisions of the City Code relating to signs.
5. All State laws and statutes governing such use are strictly adhered to and all required operating permits are secured.
6. Adequate off-street parking is provided in compliance with Section 11.19.
7. One off-street loading space in compliance with Section 11.20 is provided.

*Id.*

75. *Id.* § 11.65, subdiv. 4(C). Conditions that must be met by elderly senior housing prior to issue of a conditional use permit include:

1. Not more than ten (10%) percent of the occupants may be sixty (60) years of age or older.

The terms nursing homes and elderly senior housing are defined elsewhere in the city code.<sup>76</sup>

One perspective on this ordinance is that it allows the location of residential facilities catering to older persons within what are otherwise predominantly commercial districts to provide easier access to health care services and businesses that are particularly important to seniors because of their special medical and long-term needs. On the other hand, because other types of dwelling units are implicitly excluded from health care facility districts,<sup>77</sup> the ordinance might also be viewed as an effort to isolate older persons, creating senior ghettos in which the elderly are separated from other members of the community and their families living in purely residential areas where commercial development is not permitted.

#### 4. EMPLOYMENT AND AGE DISCRIMINATION

A number of jurisdictions in our sample have adopted employment discrimination ordinances prohibiting discrimination in em-

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2. To continue to qualify for the elderly housing classification, the owner or agency shall annually file with the City Administrator a certified copy of a monthly resume of occupants of such a multiple dwelling, listing the number of tenants by age and clearly identifying and setting forth the relationship of all occupants sixty years of age or under to qualified tenants, or to the building.
  3. There is adequate off-street parking in compliance with Section 11.19.
  4. One off-street loading space in compliance with Section 11.20.
  5. Parking areas are screened and landscaped from view of surrounding and abutting residential districts in compliance with Section 11.17, Subd. 7.
  6. All signing and informational or visual communication devices shall be in compliance with the provisions of the City Code relating to signs.
  7. The principal use structure is in compliance with the Minnesota State Uniform Building Code.
  8. Elevator service is provided to each floor level above ground floor.
  9. Usable open space at minimum is equal to twenty (20%) percent of the gross lot area.

*Id.*

76. *Id.* § 11.02, subdiv. 2, no. 52 (elderly senior homes) and no. 110 (nursing homes).

77. *See, e.g., id.* § 11.02, subdiv. 2, no. 51 (defining "dwelling unit" as, "A residential building or portion thereof intended for occupancy by one family but not including hotels, motels, nursing homes, seasonal cabins, boarding or rooming houses, tourist homes or trailers.") Most types of residential construction, including single, two-family, and similar dwelling units, are not listed as permissible uses within Buffalo's health care facility districts.



ployment based on age. An example is found in the city of Woodbury:

Section 2-196 Recruitment and selection . . . b) Competition for positions in the city service shall be open to all applicants who meet the qualifications established for the class of position for which application is made. No person shall in any way be favored or discriminated against because of race, color, creed, age, marital status, sex, political opinion or affiliation, disability, sexual orientation, or welfare assistance status.<sup>78</sup>

Such ordinances are laudable, of course, in that they evince a local government policy against age bias. For the most part, though, they are redundant of federal and state laws that also prohibit age discrimination in employment and in this sense do not promote the rights of older persons beyond what rights they already have. We did not find any ordinances in the sample group that mandated or encouraged affirmative action on behalf of older persons by creating financial or other incentives for local businesses to hire older workers.

#### 5. TAXATION AND EXEMPTIONS

Minnesota state law mandates that lower-income elderly persons (age sixty-five and older) be allowed to defer payment of property taxes.<sup>79</sup> Provided that the property owner timely files the appropriate documentation required for deferment, unpaid tax liability becomes a lien against the property tax owed on the property in question, payable when the property is sold or the taxpayer dies.<sup>80</sup> Perhaps not surprisingly, a majority of municipalities in the sample group had enacted ordinances pertaining to local taxation of and financial relief for older persons, in effect implementing a state policy favoring low-income seniors at the local level. The precise nature and contours of these relief measures varied considerably. Some ordinances concerned deferral of certain local property tax related obligations, while others included the option for deferral or tax payments. For example, in the city of Austin:

Section 2.74. The Council may defer the payment of any special assessment on homestead property owned by a person who is 65

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78. WOODBURY, MINN., CODE OF ORDINANCES ch. 2, art. V, div. 1, § 2-196 (2011).

79. See MINN. STAT. ANN. § 290B (2010). See generally KAREN BAKER & STEVE HINZE, HOUSE RESEARCH: SENIOR CITIZENS PROPERTY TAX DEFERRAL PROGRAM, MINN. H.R. DOC. (2010), <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssscptdp.pdf>.

80. See MINN. STAT. ANN. §§ 290B.04, 290B.07-.08.

years of age or older or who is retired by virtue of permanent and total disability and the City Administrator is hereby authorized to record the deferment of special assessments . . .

Elk River's code contains similar language:

Sec. 62-1. Deferral. (a) The city council is authorized to approve the deferral of the payment of a special assessment against a homestead property if the owner of the property for which the assessment is deferred is (1) sixty-five years of age or older . . .

In a similar vein, some municipalities provide, or at least allow, full or partial relief to older persons from the obligation to pay fees or other usage charges that apply to other residents. For example, in Minneapolis:

341.720. A driver may require a five dollar (\$5.00) minimum charge to employ any taxicab in Minneapolis. If a driver chooses to require a minimum fare, the minimum charge shall be displayed on both sides and the rear of each vehicle. In addition, such notice of minimum charge shall be posted inside in a manner clearly legible to passengers, nor shall any operator be barred from offering a discount to senior citizens whom have attained the age of sixty-five (65) years of age.

Similarly:

§ 64.30 (b) . . . The annual fee for an unneutered or unspayed dog or cat shall be fifty dollars (\$50.00). Individuals sixty-five (65) years of age or older and individuals who receive means-tested public assistance and/or households with limited income shall pay a discount on their annual license fee in the amount of fifteen dollars (\$15.00) for each dog or cat.

We found many other examples of local ordinances providing discounts, reduced rates, or preferential fees intended to offer financial relief for older persons. In general, however, these ordinances offered only modest benefits to older persons rather than addressing their economic needs in a broad, systematic way.

## 6. RECREATION AND LEISURE

A number of local ordinances contain references to the leisure activities of older persons. The city of Mora, for example, has established a regulatory exemption for bingo games in nursing homes:

81. AUSTIN, MINN., CODE OF ORDINANCES § 2.74, subdiv. 1 (2011) (listing conditions such as the applicant being the owner of the property, etc.).

82. ELK RIVER, MINN., CODE OF ORDINANCES § 62-1(a)(1) (2011).

83. MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 13, ch. 341, art. 5, § 341.720 (2011).

84. *Id.* tit. 4, ch. 64, § 64.30(b).

§116.05. This chapter shall be construed to regulate all forms of lawful gambling within the city except:

(A) Bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if: the prizes for a single bingo game do not exceed ten dollars (\$10); total prizes awarded at a single bingo occasion do not exceed two hundred dollars (\$200); no more than two (2) bingo occasions are held by the organization or at the facility each week; only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game; no compensation is paid for any persons who conduct the bingo;<sup>85</sup> and a manager is appointed to supervise the bingo.

The city of Mora has also established a formal entity that can theoretically allow the voice of older residents to be heard with regard to the city's park and recreational activities:

§ 32.18 Advisory Committee.

The Board may appoint a committee to advise itself, the committee to consist of up to ten (10) members representing community youth, city residents, residents of surrounding townships, senior citizens, civic groups and similar interested segments of the community served by the city park and recreational programs.<sup>86</sup>

## 7. OLD AGE AND DISABILITY

A particularly interesting observation was the wide range of local legislation that essentially treated older individuals and persons with disabilities as members of a single group to be protected or otherwise treated differently than others in the community. One such ordinance, from the city of Dawson, regulates the location of group mailboxes within apartment complexes and similar residential facilities:

§ 10-5-4: HANDICAPPED PERSONS: Any handicapped or elderly person who would have difficulty using a group box location shall, upon notification of handicap or physical condition to the city clerk, municipal building, be dealt with on an individual basis by the postmaster.<sup>87</sup> This mail delivery is specific to the individual, not the property.

Although such ordinances do offer benefits to the elderly, they implicitly reflect an assumption that old age itself is a disability, or that all older persons are also disabled. One could argue that such stereotypes contribute to widespread ageism and in the long run may

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85. MORA, MINN., CODE OF ORDINANCES tit. 11, ch. 116, § 116.05 (2011).

86. *Id.* tit. 3, ch. 32, § 32.18.

87. DAWSON, MINN., CITY CODE § 10-5-4 (2011).

do more harm than good with regard to advancing the rights of older persons and contributing to positive images of aging.

### C. Qualitative Findings

Almost as illuminating as the quantitative results of the research was the information obtained through the qualitative component of the study. A total of thirteen interviews were conducted with elected or appointed local government officials of sample municipalities across the state of Minnesota.<sup>88</sup> All participants were told of the purposes and nature of the research project and all provided informed consent to participate in the study. All interviews were conducted by phone. The transcripts reveal several common themes with regard to local authorities' views on the need for special elder-friendly local laws. These themes include the following:

#### **THEME 1: THE SENSE OF BEING SMALL AND THE SOCIAL VALUE OF HAVING A SMALL AND FLEXIBLE BODY OF REGULATIONS.**

Many of the interviewees expressed the notion that their localities did not and did not need to exercise their local regulatory authority to benefit the elderly because they were simply "too small." For example,

"This is a small community and we intentionally have a small government."<sup>89</sup>

"We are a smaller community. We use more of an honor system. The Senior Center is available to seniors out of respect for them. There are many seniors in the community and offering the facility goes hand-in-hand with how we run our community."<sup>90</sup>

The notion of smallness coincides with the advantages of the flexibility of informal approaches to advancing social issues:

"The less formal, the better, because we have more flexibility to adjust funding."<sup>91</sup>

Formal regulation of the rights of older persons is thus characterized, or at least perceived, as rigid and ineffective as a means to achieve social benefits. Interviewees did not appear to appreciate the value of codifying rights and privileges in formal legal texts.

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88. All interview transcripts on file with authors.

89. Interview, in Mendota Heights, Minn. (Oct. 4, 2010) (pop. 11,634).

90. Interview, in Melrose, Minn. (Oct. 4, 2010) (pop. 3,247).

91. Interview, in Elk River, Minn. (Sept. 9, 2010) (pop. 23,231).

**THEME 2: THE NATURE AND VALUE OF EQUALITY.**

Some interviewees explained the absence of local legislative initiatives benefiting older persons using the language of equality. As one city administrator stated,

“One group would not be favored over another unless they came forward. The ordinances we pass are intended to affect all people equally.”<sup>92</sup>

Similar views were articulated by officials in small and large municipalities alike:

“We don’t because we don’t differentiate between age groups.”<sup>93</sup>

“No restriction of rights or giving of rights.”<sup>94</sup>

“We view our residents as a whole. We don’t single out seniors.”<sup>95</sup>

“Stillwater provides ‘baseline services to all citizens.’ . . . The city likes to provide services equally and doesn’t like to provide bonuses to certain groups of people.”<sup>96</sup>

It was interesting to find that, according to these interviewees, legislating explicit protections for older residents would actually be unfair or discriminatory to other members of the community. It may be that these officials were of the opinion that older persons are not viewed as a minority or socially disadvantaged group, with special needs or interests that warrant special consideration or protection. Or, these statements might be construed as evidence that ageism is widespread.

**THEME 3: THE LACK OF LOCAL INITIATIVES DRIVEN BY “GREY” ADVOCACY.**

Some interviewees stressed that their communities’ failure to enact ordinances benefiting older persons was due to the lack of local initiative. For example, in response to the question “Why has (name of municipality) not utilized these methods to support the elderly?,” the interviewees stated as follows:

“It has never come up.”<sup>97</sup>

“It has [not] come up as an issue in Melrose. Most ordinances arise when issues arise.”<sup>98</sup>

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92. Interview, in Mendota Heights, Minn. (Oct. 4, 2010) (pop. 11,634).

93. Interview, in Austin, Minn. (Sept. 29, 2010) (pop. 22,981).

94. Interview, in Chatfield, Minn. (Sept. 16, 2010) (pop. 2,551).

95. Interview, in Ham Lake, Minn. (Sept. 29, 2010) (pop. 15,259).

96. Interview, in Stillwater, Minn. (Sept. 21, 2010) (pop. 17,970).

97. Interview, in Mora, Minn. (Sept. 29, 2010) (pop. 3,518).

98. Interview, in Melrose, Minn. (Oct. 4, 2010) (pop. 3,247).

"It has never been an issue that has come up before."<sup>99</sup>

"They have never had anyone say they felt there was a need."<sup>100</sup>

"We don't view this as a government issue. Senior residents have their own retirement income."<sup>101</sup>

"Doesn't rise to the level of needing an ordinance—more driven by citizen concern."<sup>102</sup>

"No need for them [local laws for older residents]."<sup>103</sup>

These responses suggest that local government officials are not themselves personally inclined to propose ordinances that benefit older persons. The interview responses imply that local governments will assert their full regulatory authority on behalf of their senior citizens only if prodded by grassroots advocates. Some interviewees stressed that if locally-driven proposals were to be presented, the city council would likely support them:

"The council would support any rights of its older residents that need to be addressed or come before the council."<sup>104</sup>

"Ordinances are frequently added or changed based on need. [The interviewee] is confident if an issue were to be brought up [concerning rights of older persons], the city council would address it."<sup>105</sup>

One explanation for this theme is the notion that as long as there is no social crisis, there is no need for social change. In most municipalities, there appears to be little or no perception that a crisis exists with regard to the rights of their older residents. Because state and national programs are understood to provide benefits and services to older persons, any sense of urgency necessary to prompt local government action is lacking.

#### **THEME 4: RELIANCE ON NON-LEGISLATIVE POWERS TO ADDRESS THE RIGHTS AND NEEDS OF OLDER RESIDENTS.**

It appeared from the interviews that some localities exercise their non-legislative powers in ways that do promote or advance the rights of their older residents. For example, local governments enter into a wide variety of contracts in connection with their obligation or choice to provide particular services. As described by one interviewee:

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99. Interview, in Badger, Minn. (Sept. 16, 2010) (pop. 459).

100. Interview, in Bemidji, Minn. (Sept. 16, 2010) (pop. 13,749).

101. Interview, in Austin, Minn. (Sept. 29, 2010) (pop. 22,981).

102. Interview, in Hibbing, Minn. (Sept. 18, 2010) (pop. 16,237).

103. Interview, in Bemidji, Minn. (Sept. 16, 2010) (pop. 13,749).

104. Interview in Badger, Minn. (Sept. 16, 2010) (pop. 459).

105. Interview, in Moorhead, Minn. (Sept. 16, 2010) (pop. 36,804).

"[O]ne example may be that we have a contract with the local garbage service and the service agreed to provide senior residents a discount."<sup>106</sup>

This non-regulatory approach was reflected in funding for local activities for older residents as part of the overall funding of social services to local residents. Such actions ostensibly did not need any specific authorizing legislation because they were, it seems, perceived to be an implicit aspect of the broader formal budget of the local municipality.

**THEME 5: THE SOCIAL CONSTRUCTION OF OLD AGE AS "WEAKNESS."**

When local officials that were interviewed did report on activities and initiatives of local government that pertained specifically to the community's older population, an important theme was that these services were targeted toward weak, poor, disabled, or frail segments of the older population.

"[The city clerk] goes to the senior center and nursing homes during elections to make sure that the seniors can vote."<sup>107</sup>

"There are bus services (called 'Vua-la Ride') which take seniors from place to place when needed."<sup>108</sup>

"The city provides bonuses related to senior housing, which lowers the costs of senior housing."<sup>109</sup>

None of the participants referenced any pro-elder municipal activities affecting employment of older workers, promoting legal empowerment, advancing educational opportunities in old age, or promoting entrepreneurship in later life. Local non-regulatory activities pertaining to occupation, education, and leisure did not appear to target older persons as such.

**THEME 6: FEDERAL AND STATE GOVERNMENTS AS PREDOMINANT ON ELDER RIGHTS.**

A final important theme that emerged from the interviews was that the role of local government is simply to observe and enforce relevant federal and state law. For example, one official stressed the fact that:

"[We] follow the state law which requires deferred assessments."<sup>110</sup>

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106. Interview, in Melrose, Minn. (Oct. 4, 2010) (pop. 3,247).

107. Interview, in Bemidji, Minn. (Sept. 16, 2010) (pop. 13,749).

108. Interview, in Hibbing, Minn. (Sept. 18, 2010) (pop. 16,237).

109. Interview, in Stillwater, Minn. (Sept. 21, 2010) (pop. 17,970).

Some participants expressed their view that the state and federal level are the more appropriate arena for such legislative action:

“We follow all state and federal laws, though . . . These issues are better addressed at the state and federal level.”<sup>111</sup>

According to this theme, in light of existing federal and state law, no compelling reason exists to enact local laws to protect older persons or expand their rights. Moreover, there appears to be a strong conviction among some local officials that it is better, from an elder rights perspective, that these issues are addressed at the higher levels of government.

## V. Recommendations

Based on both the quantitative and qualitative results discussed above, it is our perception that there is probably significant room for developing a robust body of municipal elder law. The Minnesota legislature has delegated extremely broad legislative authority to most of its towns and cities to provide for their residents. Yet only few of them have made more than token efforts toward creating a regulatory environment that recognizes the special issues facing older persons or seeks to protect and expand their legal rights. The ordinances we found that do explicitly acknowledge the needs and rights of seniors tend to fall within the most traditional spheres of local regulatory authority, such as land use laws and taxation. Many ordinances focus on age as a negative attribute; some arguably work to isolate and stigmatize age by relegating congregate housing options for compromised seniors to commercial districts or other non-residential areas. Few local governments have been creative in their efforts to create aging-friendly communities through positive law. Few government officials seem aware of their potential to be leaders of the global effort to protect and serve the needs of a rapidly aging population.

As noted at the beginning of this Article, international human rights law has been an important focus of the work of many legal scholars and advocacy organizations as a tool for social change in the field of elder rights. There is great potential, therefore, for advocates, including lawyers and advocacy organizations, to begin participating in legislative processes not only at the national and state levels but at

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110. Interview, in Bemidji, Minn. (Sept. 16, 2010) (pop. 13,749).

111. Interview, in Elk River, Minn. (Sept. 27, 2010) (pop. 23,231).



the municipal level as well. To that end, we make a number of recommendations.

First, major elder rights organizations such as AARP, the National Academy of Elder Law Attorneys, the National Senior Citizens Law Center, and similar players should devote a larger share of their resources to promote, educate, and advocate on behalf of expanded local laws promoting elder rights. Where appropriate—as in major metropolitan areas—they should seek to establish not just state chapters or sections but local chapters as well. Such chapters are more likely to have knowledge of the particular composition of the social, cultural, and economic needs of elders in their community. Second, practitioners, including elder law, civil rights, and other attorneys who represent older persons, should better utilize such local legislation that exists and serve as agents for social change in their localities. These practitioners should propose, draft, and assist in the implementation of local ordinances pertaining to older persons. Third, municipal leaders, politicians, and local administrators should be educated about the potential economic benefits<sup>112</sup> of using local law as a vehicle for social change in this field, especially in light of the growing political power of older residents.

One means to help accomplish these objectives would be for states to mandate that local governments representing communities of a certain size designate a government official who is responsible for the affairs of older persons vis-à-vis local government activity. Such a mandate was established in 2010 under a newly-enacted amendment to Israel's Senior Citizens Act.<sup>113</sup> Under the amendment, each local authority<sup>114</sup> is required to appoint an official who is responsible for

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112. See generally, e.g., PETER KARL KRESL & DANIELE IETRI, *THE AGING POPULATION AND THE COMPETITIVENESS OF CITIES: BENEFITS TO THE URBAN ECONOMY* (Edward Elgar Pub'g Ltd. 2010).

113. For a general overview of Israel's Senior Citizens' Act, see Israel Doron, *Law and Older People—The Rise and Fall of Israel's Senior Citizens' Act*, 20(3) J. AGING & SOC. POL'Y 353 (2008) [hereinafter Doron, *Law and Older People*]. The new provision was enacted in 2010 and is known as the Senior Citizens Act, (Amendment No. 9), 2010, BOOK OF LAWS, no. 2250, at 589.

114. In general, Israeli law recognized three different types of localities: cities, local-municipality, and regional-municipality. See BOOK OF LAWS, no. 8, at 197; BOOK OF LAWS, no. 9, at 256; BOOK OF ORDINANCES, no. 797, at 1259. Each type of locality has a different legal regulatory scheme. *Local Government in Israel*, THE KNESSET, [http://www.knesset.gov.il/lexicon/eng/LocalAuthorities\\_eng.htm](http://www.knesset.gov.il/lexicon/eng/LocalAuthorities_eng.htm) (last visited May 9, 2012). The new amendment of Israel's Senior Citizens' Act applies to all types of municipalities. See Doron, *Law and Older People*, *supra* note 113.

senior citizens' affairs in the municipality.<sup>115</sup> The amendment does not create any substantive legal obligations that this official is required to enforce. The rationale for this new mandate is that the mere existence of an appointed official responsible for older persons' affairs will promote and raise awareness, leading ultimately to local government regulation benefiting seniors.<sup>116</sup>

The United States' experience with the Americans with Disabilities Act (ADA)<sup>117</sup> also offers support for this conclusion. The ADA, enacted in 1990, conferred a broad range of civil rights on persons with disabilities in the areas of employment and access to public accommodations, education, and government services.<sup>118</sup> A study published in 2001 examined how twenty different cities in two states have implemented the ADA.<sup>119</sup> Factors that were found to affect the level of local government implementation and compliance with the ADA included whether there was an ADA coordinator or similar position within the municipality's structure, the extent to which municipal staff was aware of the existence and mandates of the law, the level of training of municipal staff, participation and input from disabled persons, the focus of citizen commissions, interaction, and financial resources.<sup>120</sup> The study concluded that "[i]mplementation appears to have been most successful in cities where an administrator or staff member has recognized the importance of the ADA as a civil rights law and the potential legal exposure it represents."<sup>121</sup>

This study offers support for our view that local law can become a force expanding and protecting the rights and privileges of older persons only in the context of a proactive initiative to increase the

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115. *See generally* BOOK OF LAWS.

116. This legal strategy by senior rights groups in Israel was modeled after a similar effort arising from the Israeli women's rights movement. Women in Israel were successfully able to legally establish various formal institutions, starting in the 1980s—creating the women's advisor to the Prime Minister, providing a women's advisor in each government ministry, and finally, having a women's advisor in every local municipality in Israel. Local Municipalities Act (Advisor for Women's Affairs), 2000, BOOK OF LAWS, no. 1751, at 278; *see also* RUTH HALPERIN-KADDARI, *WOMEN IN ISRAEL: A STATE OF THEIR OWN* 46–49 (2004).

117. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) (amended 2008) (current version at 42 U.S.C. § 12101 (2006)).

118. 42 U.S.C. § 12101(a)(3).

119. *See generally* Jacqueline Switzer, *Local Government Implementation of the Americans with Disabilities Act: Factors Affecting Statutory Compliance*, 29.4 POL'Y. STUDIES J. 654 (2001).

120. *Id.* at 657–660.

121. *Id.* at 660–61.

awareness, knowledge, and commitment of local officials to the issues confronting older persons.

Social experiments undertaken at the municipal level have shown the potential of thinking locally. For example, the state of Florida has collaborated with AARP in its Communities for a Lifetime (CFL) project.<sup>122</sup> CFL “is a statewide initiative that assists Florida cities, towns and counties in planning and implementing improvements that benefit their residents, both youth and elder.”<sup>123</sup> As of May, 2011, over one hundred Florida counties, cities, and towns were part of this project.<sup>124</sup> Similar acts of localism include the Blue Zone experiment in Albert Lea, Minnesota,<sup>125</sup> and the Green House Project, which funds development of intergenerational co-housing within communities.<sup>126</sup> “The Green House model is a de-institutionalization effort designed to restore individuals to a home in the community by combining small

122. See generally COMMUNITIES FOR A LIFETIME, <http://www.communitiesforalifetime.org> (last visited Apr. 18, 2012).

123. *Community Resources: Communities for a Lifetime*, SAFEANDMOBILESENIORS.ORG, FLA. DEP’T OF TRANSP., <http://www.safeandmobileseniors.org/LocalCommunityResources.htm> (last visited Apr. 18, 2012).

124. *List of Participating Cities, Towns, and Counties*, COMMUNITIES FOR A LIFETIME [http://www.communitiesforalifetime.org/comm\\_list.php](http://www.communitiesforalifetime.org/comm_list.php) (last visited Apr. 18, 2012). Communities for a Lifetime has spread to other states; indeed, in 2010 the Minnesota Board on Aging submitted a report to the state legislature on how to implement the CFL program in Minnesota. See generally MINN. BD. AGING, BUILDING COMMUNITIES FOR A LIFETIME IN MINNESOTA: A REPORT TO THE 2010 MINNESOTA LEGISLATURE (Feb. 28, 2010) [hereinafter REPORT TO THE 2010 MINNESOTA LEGISLATURE], available at [http://www.mnlifetime.comunities.org/en/About/~media/CFL/About/CFL\\_Report\\_2-28-10.ashx](http://www.mnlifetime.comunities.org/en/About/~media/CFL/About/CFL_Report_2-28-10.ashx). MINN. STAT. § 256.975, subdiv. 10, enacted in 2009, required the Minnesota Board on Aging (MBA) to prepare a report to the legislature on CFL including recommendations for a process for communities to request and receive CFL designation. The statute specifically requires the MBA to:

Consult with Area Agencies on Aging (AAAs), the League of Minnesota Cities, and the state Departments of Employment and Economic Development, Health, and Human Services (DHS);

Review senior friendly community models locally and across the United States;

Define a process for communities to request and receive designation as a CFL; and,

Estimate the cost to administer the designation program.

MINN. STAT. § 256.975, subdiv. 10 (West Supp. 2012). The report was presented to the legislature in 2010. See REPORT TO THE 2010 MINNESOTA LEGISLATURE, *supra*.

125. See *Vitality Project*, CITY OF ALBERT LEA, <http://www.cityofalbertlea.org/aarpblue-zones-city-health-makeover/> (last visited Apr. 18, 2012).

126. See *Frequently Asked Questions*, THE GREEN HOUSE PROJECT, <http://thegreenhouseproject.org/about-us/frequently-asked-questions/> (last visited Apr. 18, 2012).

homes with the full range of personal care and clinical services expected in high-quality nursing homes."<sup>127</sup>

## VI. Conclusion

In general, the data collected in the study confirmed the original hypothesis—that local governments rarely exercise their authority to its fullest extent on behalf of elder persons. This means that there is enormous room for action, initiatives, and creative original approaches to addressing the unique economic, social, and cultural issues facing the elderly. The qualitative component of our research suggests a general willingness on the part of local officials to respond favorably to local elder-centered initiatives, but only if such initiatives arise from within the community and concern issues of real substance. The research also indicates, however, that local officials may lack an understanding of ageism and demographic changes that will affect their communities. Our research also suggests that, given the general tendency of local governments to avoid legislating on behalf of their elderly residents, it is incumbent upon advocates operating at the state, national, and international levels to provide education and encouragement to local governments. Moreover, advocates should exert pressure, in some situations, including the highly motivating pressure that can result from litigation. The future of elder law is most assuredly composed, in part, of a robust body of municipal law aimed specifically at seniors: now is the time to begin moving toward that future.

### APPENDIX 1: QUANTITATIVE INSTRUMENT

**Age-specific ordinances:** Is there specific legislation focusing solely on "senior citizens"/"older residents"? (Yes/No)

**Unique legal institutions:** Is there a statutory "senior citizens / older residents" advisory board or any other statutory institution specifically for older residents? (Yes/No)

**Statutory definition of "older resident":** Is there a local legal definition of what is an "older resident" / "senior citizen"? (Yes/No)

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127. *Mission and Vision*, THE GREEN HOUSE PROJECT, <http://www.thegreenhouseproject.org/about-us/mission-vision/> (last visited Apr. 18, 2012).

NUMBER 1

MUNICIPAL ELDER LAW 69

**Local taxation:** Are there specific local tax ordinances regarding older residents? (Yes/No)

**Zoning/urban planning:** Are there specific local zoning or local urban planning ordinances regarding older residents? (Yes/No)

**Private or public transportation/parking:** Are there specific local transportation ordinances regarding older residents? (Yes/No)

**Crime/elder abuse** Are there specific local crime prevention / elder abuse & neglect / ordinances regarding older persons? (Yes/No)

**Financial relief:** Are there specific local ordinances regarding financial [tax] relief for older residents? (Yes/No)

**Housing:** Are there specific local ordinances regarding housing for older residents? (Yes/No)

**Accessibility:** Are there specific local ordinances regarding accessibility for older residents? (Yes/No)

**Recreation/leisure:** Are there specific local ordinances regarding recreation / leisure activities for older residents? (Yes/No)

**Health:** Are there specific local ordinances regarding specific/unique health care services for the older residents? (Yes/No)

**Income support/social security:** Are there local ordinances regarding poverty / income support for poor older residents? (Yes/No)

**Employment:** Are there local ordinances regarding age discrimination in employment or the promotion of employing older workers? (Yes/No)

**Other:** Are there any other kind of local ordinances or by-laws regarding older residents? (Yes/No)

## APPENDIX 2: QUALITATIVE RESEARCH TOOL-

## OPEN ENDED QUESTIONNAIRE

What has (name municipality) done to support the rights of the elderly?

Why has (name municipality) chosen these methods as a means of support to the elderly?

What else could (name municipality) do to support the rights of the elderly?

Why has (name municipality) not utilized these methods to support the elderly?

Has (name municipality) had a great deal of land use or zoning dispute related to the elderly?

If yes, how have these disputes been resolved?

Are there any methods currently in the process of creation to support the elderly?

What local legal powers do you perceive that (name municipality) has in regards to zoning?

What do you feel is (name municipality)'s biggest obstacle with regards to elderly rights?

What resources are you aware of that could help (name municipality) overcome this obstacle?