

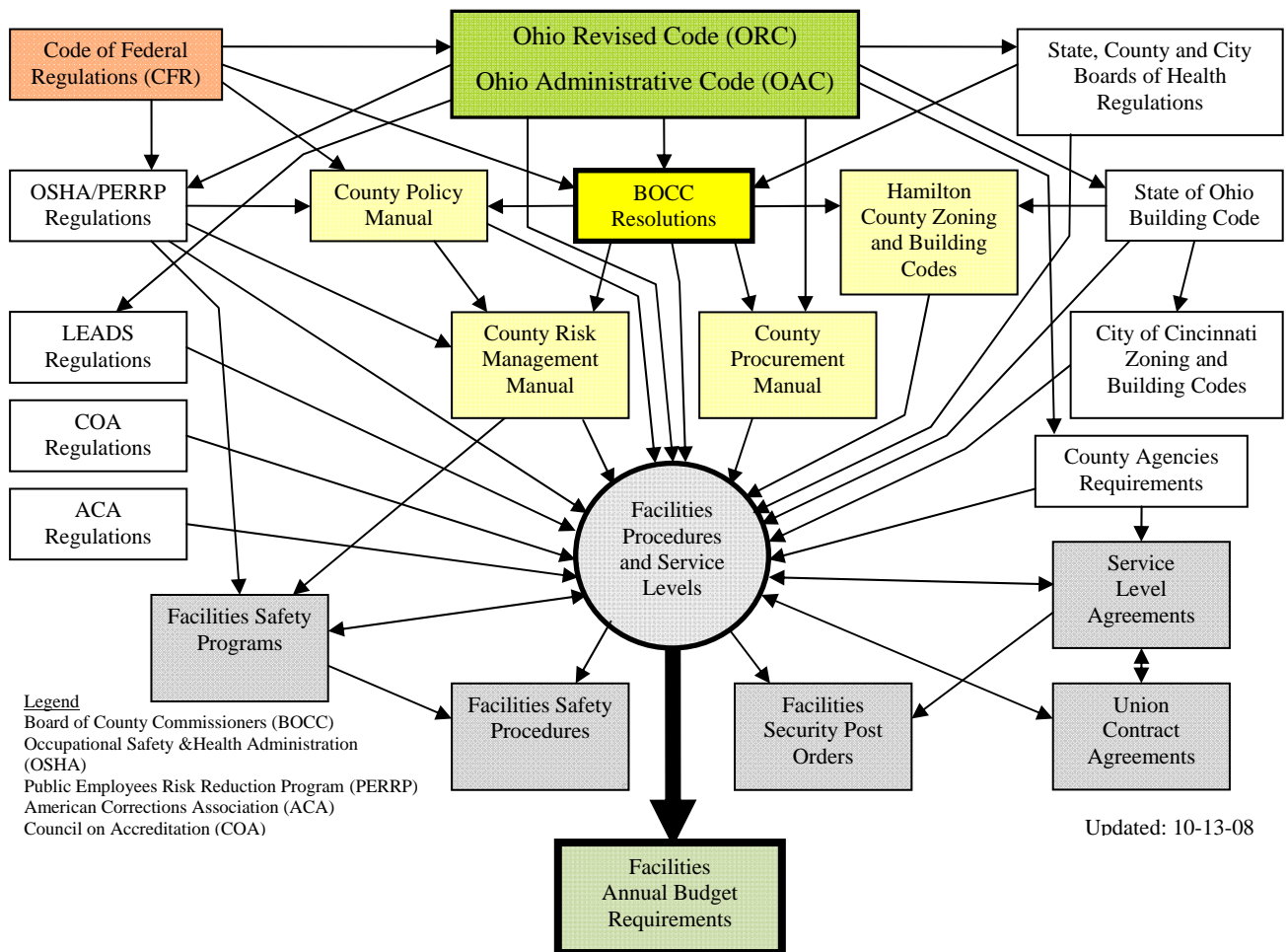
2009 Non-Mandated Expenditures Department Response

DEPARTMENT: COUNTY FACILITIES
 DEPARTMENT HEAD: Ralph Linne
 OCA TITLE: 060030 Security/Safety

Hamilton County departments and agencies have the opportunity to respond and provide insight to the Office of Budget and Strategic Initiatives (BSI) initial assessment as to non-mandated services. This response form should be used for each specific BSI assessment; not a general response for entire department. Take as much space as necessary for each question.

1. Are there elements of the BSI non-mandated services that you believe are mandated? If so, provide the specific Ohio Revised Code (ORC) citation, Code of Federal Regulation (CFR) and/or relevant case law information. Please be especially diligent if there is a specific service or staffing level prescribed by law.

Below is a Flow Chart showing the Laws, Rules, and Agreements which determine the budget and staffing levels for the Hamilton County Facilities Department (HCFD).



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The Director of County Facilities feels that **ALL SAFETY SERVICES AND STAFFING**, provided under this OCA, are required in order to support the maintenance, construction, and renovation of BOCC own and leased facilities. It was determined only **A PART OF SECURITY SERVICES AND STAFFING** are required. These locations are:

- New Jail Site (Sara Lee)
- TB Control (237 William Howard Taft)
- Board of Health (250 William Howard Taft)

Below are several sections of the ORC which clearly states this opinion:

ORC 307.01(A) states “(A) A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county commissioners when, in its judgment, any of them are needed.

ORC 307.92 states “As used in sections 307.86 to 307.91, inclusive, of the Revised Code, “contracting authority” means any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof.”

Detailed below is an overview of the safety and security functions performed by the Department of Facilities and the applicable sections of the ORC, case law, and other legal mandates which clearly state that these functions must be provided.

I. Safety: Compliance

Pertinent Sections of the Ohio Revised code mandating employer safe workplace compliance.

Ohio Revised Code: Chapter 4101: SAFETY IN THE WORKPLACE

4101.11 Duty of employer to protect employees and frequenters.

- **Every employer shall** furnish employment which is safe for the employees engaged therein, shall furnish a place of employment which shall be safe for the employees therein and for frequenters thereof, shall furnish and use safety devices and safeguards, shall adopt and use methods and processes, follow and obey orders, and prescribe hours of labor reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters.

4101.12 Duty of employer to furnish safe place of employment.

- **No employer shall** require, permit, or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide, and use safety devices and safeguards, or fail to obey and follow orders or to adopt and use methods and processes reasonably adequate to render such employment

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and place of employment safe. No employer shall fail to do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees or frequenters. No such employer or other person shall construct, occupy, or maintain any place of employment that is not safe.

4101.15 Prohibited acts.

- No employer, employee, or other person shall violate this chapter or Chapter 4121. of the Revised Code, do any act prohibited by such chapters, fail to perform any duty lawfully enjoined, within the time prescribed by the bureau of workers' compensation, for which violation no penalty has been specifically provided, or fail to obey any lawful order given or made by the bureau, or any judgment or decree made by any court in connection with such chapters.

4101.16 Every day a separate violation.

- Every day during which any person, or corporation, or any officer, agent, or employee thereof fails to observe and comply with any order of the bureau of workers' compensation, or to perform any duty enjoined by this chapter and Chapter 4121. of the Revised Code, constitutes a separate violation of the order or chapters.

4101.99 Penalty.

- Whoever violates section 4101.15 of the Revised Code shall be fined not less than fifty nor more than one thousand dollars for a first offense; for each subsequent offense such person shall be fined not less than one hundred nor more than five thousand dollars.

Ohio Revised Code: Chapter 4167: PUBLIC EMPLOYMENT RISK REDUCTION PROGRAM

4167.04 Duty of public employer to provide safe place of employment.

- Each public employer shall:
- Furnish to each of his public employees employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to his public employees;
- Comply with Ohio employment risk reduction standards, rules, and orders adopted or issued pursuant to this chapter.

4167.05 Compliance with employment risk reduction standards, rules, and orders.

- Each public employee shall:
- Comply with Ohio employment risk reduction standards, rules, and orders adopted or issued pursuant to this chapter which are applicable to the public employee's actions and conduct;
- Comply with safety rules the public employer establishes for the purpose of fulfilling compliance with Ohio employment risk reduction standards, rules, or orders adopted or issued pursuant to this chapter. All such rules the public employer adopts shall be reasonable as determined in accordance with the purposes and objectives of this chapter.

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4167.06 Right to refuse to work under unsafe conditions.

- A public employee acting in good faith has the right to refuse to work under conditions that the public employee reasonably believes present an imminent danger of death or serious harm to the public employee, provided that such conditions are not such as normally exist for or reasonably might be expected to occur in the occupation of the public employee.

4167.10 Inspection and investigation of workplaces.

- In order to carry out the purposes of this chapter, the administrator of workers' compensation or the administrator's designee shall, as provided in this section, inspect and investigate any plant, facility, establishment, construction site, or any other area, workplace, or environment where work is being performed by a public employee of a public employer, and any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any public employer, administrator, department head, operator, agent, or public employee.

4167.13 Prohibiting retaliation by employer.

- No public employer shall discharge or in any manner discriminate against any public employee because the public employee, in good faith, files any complaint or institutes any proceeding under or related to this chapter, or testifies or is about to testify in any proceeding, or because of the exercise by the public employee, on his own behalf or on the behalf of others, of any right afforded under this chapter.
- See Attachment excerpt from: "Safety Works for Public Employers." A publication of the Ohio Bureau of Worker's Compensation detailing mandated safety training and recordkeeping requirements.

Discussion

The above listed sections of the Ohio Revised Code can be arcane and leaves open the question: What are the legal consequences, besides the payment of fines, if the County elects to disregard safe workplace requirements? For an answer, attached is an April 2008 treatise prepared by Mr. Douglas J. Suter, a Columbus, Ohio attorney who is nationally recognized for practicing in the area of OSHA litigation. This treatise provides insight to the risk of civil liability that attaches when safe workplace standards are not adhered to or only haphazardly enforced by Ohio employers.

It should also be noted that *ORC 4101.11 Duty of employer to protect employees and frequenters*, noted above, has been labeled by Ohio Courts at the "frequenter" statute. This statute provides that an employer shall furnish a safe place of employment for not only employees, but for "frequenters." The term "frequenters" has been interpreted by Ohio Supreme Courts to include independent contractors such as subcontractors and suppliers. See *Eicher v. United States Steel Corp.* (1987), 32 Ohio St.3d 248, 249. This duty is a codification of the common-law duty owed by an owner or occupier of premises to its invitees, which requires that the premises be kept in a reasonably safe condition and that warning be given of dangers of which the owner or occupier of the premises has knowledge. See *Westwood v. Thrifty Boy* (1972), 29 Ohio St.2d 84. For the County, this means that safe workplace standards must be maintained not only for its employees, but for any contractors, subcontractors, independent contractors, suppliers, and vendors. Failure to

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comply here provides for a possible civil cause of action against the County by any "frequenter" injured on County property due to a safety hazard. Note that the Ohio Revised Code is clear that immunity is not afforded to County Commissioners. See ORC 305.12: Liability of commissioners (The board of county commissioners may sue and be sued, and plead and be impleaded, in any court.)

Building Safety Audits: Based on the discussion above, the practice of the Department of conducting safe workplace building audits is supported. Without these building audits which ensure that unsafe work environments and practices are corrected, the County would fail to meet the duty imposed under ORC 4101.11.

Additional Award for Violation of Specific Safety Requirement in a Workers' Compensation Claim (VSSR): Note further that under Article II, Section 35 of the Ohio Constitution it provides for the granting of an additional award over and above the standard workers' compensation benefits where the claimant's injury or death is found to have been caused by the employer's violation of a specific safety requirement of the commission. Moreover, the workers' compensation premium does not cover the additional award. The VSSR is an award paid by the employer directly. Thus, a VSSR award is not a modification of a previous award, but is a new, separate, and distinct award. See *State ex rel. Curry v. Indus. Comm.* (1979), 58 Ohio St.2d 268, 269, 12 O.O.3d 271, 272, 389 N.E.2d 1126, 1128, for an overview VSSR awards.

Under the current state scheme, the Industrial Commission of Ohio (IC) is authorized to grant this additional award to an injured worker when a workers' compensation injury, illness or death results from an employer's VSSR. This additional award ranges from 15 percent to 50 percent of the maximum allowable weekly compensation rate granted to the injured worker and may be applied for within two years of the injury, death or initial diagnosis of illness.

The safe work procedures implemented by the Department of Facilities have been directly responsible for limiting the County's exposure to a VSSR claim. See the attached overview of Ohio's VSSR program. Below is the pertinent section of Article II, Section 35 of the Ohio Constitution implanting Ohio's VSSR program.

[The Industrial Commission of Ohio] shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employees, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

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II. Environmental Compliance: Specific Programs

Refrigerant Management

Mandated under 40 CFR Part 82, which requires the following:

- Requires service practices that maximize recycling of ozone-depleting compounds (both chlorofluorocarbons [CFCs] and hydrochlorofluorocarbons [HCFCs] and their alternatives) during the servicing and disposal of air-conditioning and refrigeration equipment.
- Sets certification requirements for recovery and recycling equipment.
- Restricts the sale of refrigerant so that it is only sold to certified technicians and appliance manufacturers.
- Requires persons servicing or disposing of air-conditioning and refrigeration equipment to certify to the EPA on OMB Form #2060-0256 that they have acquired recycling or recovery equipment and are complying with the requirements of the rule.
- Requires the repair of substantial leaks in air-conditioning and refrigeration equipment with a charge of greater than 50 pounds.
- Establishes safe disposal requirements to ensure removal of refrigerants from goods that may enter the waste stream with the charge intact (e.g., motor vehicle air conditioners, home refrigerators, and room air conditioners).
- Sets certification for technicians and reclaimers.

The enforcement of 40 CFR Part 82 falls under the Environmental Protection Agency (EPA) at the federal level. However, the Ohio EPA has promulgated state administrative regulations that it enforces regarding the storage, transportation and disposal of lubricants and oils contaminated with CFCs and HCFCs. Ohio's regulations compliment similar requirements found at the federal level.

The EPA discloses that it enforces its requirements through the performance of random inspections and in response to tips. Under the regulation, the EPA is authorized to assess fines of up to \$32,500 per day for any violation it finds under the regulations. Guidance provided by the EPA finds that the most common violations it discovers include:

- Improper documentation by in-house technicians
- Incomplete documentation by contractors
- Improper disposal of refrigerant containing equipment
- Failure to repair leaking system, and
- Inadequate EPA technician certification

Recent violations and settlements posted on its website, finds that the EPA has sought enforcement against both public and private sector entities. Examples of recent public sector entities fined by the EPA include:

- The U.S. Environmental Protection Agency reached a \$118,404.00 settlement with the University of California over violations of the refrigerant leak repair regulations. The civil penalty stems from ozone-depleting refrigerant leak repair violations identified during inspections of U.C.'s Berkeley and Davis campuses in 2002.
- The U.S. Environmental Protection Agency announced a \$165,000.00 settlement with New York Transit Authority over allegations that the upkeep of "Redbird" subway cars violated

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Environmental Protection Agency stratospheric ozone regulations. The 2004 complaint alleged that on a number of occasions, dating from 1998, the New York Transit Authority failed to maintain service records and repair leaks of the Redbird subway car air-conditioning systems.

- Three North Carolina air-conditioning repairmen plead guilty in U.S. District Court to violating the Clean Air Act by knowingly venting ozone-depleting hydrochlorofluorocarbon (HCFC) refrigerant, R-22, into the atmosphere. The three employees, of J & J Maintenance, a subcontractor employed by the U.S. Department of Defense at Ft. Bragg, N.C., were responsible for maintaining the residential air conditioning units at Ft. Bragg. When sentenced, each defendant faces a maximum possible sentence of up to five years in prison and/or a fine of up to \$250,000.

The County is a heavy user of refrigerant to include chillers that provide air conditioning to buildings to self-contained systems like water fountains, and the Department of Facilities has developed practices which ensure compliance. Deviation from these practices either by County employees or contractor could in result in civil fines and/or criminal prosecution. Notre further that EPA regulations mandate that the County, not contractors, as the party responsible to maintain records on air conditioning and refrigerant-containing equipment.

Integrated Pest Management

The Department of Facilities is mandated by federal and state law to conform with safe practices regarding the application and storage of pesticide chemicals. Applicable law, regulations, and standards include:

- Ohio Revised Code, Title IX Agriculture-Animals-Fences, Chapter 921: Pesticides.
- Ohio Administrative Code, 901:5 Plant Industry, Chapter 901:5-11: Pesticides.
- Title 7, United States Code, Section 136 et seq, Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.
- Title 29, Code of Federal Regulations, Part 1910, Occupational Safety and Health Standards.
- Title 40, Code of Federal Regulations, Part 165, Pesticide Management and Disposal—Recommended Procedures and Criteria for Storage of Pesticides and Pesticide Containers.

The procedure adopted and practiced by the Department is set forth to meet or exceed those sections of federal and state law, and ensure compliance with section 921.19 of the Ohio Revised Code, that in its entirety, states as follows: "Every state agency, municipal corporation, and other governmental agency and political subdivision is subject to this chapter [Ohio Rev. Code, Title IX Agriculture-Animals-Fences, Chapter 921: Pesticides] and the rules adopted thereunder with respect to the application, handling, and use of pesticides. Each state agency, municipal corporation, and other governmental agency and political subdivision is responsible for the acts of each of its employees in the application, handling, and use of pesticides."

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III. Security: Compliance

Pertinent Sections of the Ohio Revised code mandating security related compliance within the workplace.

A. Physical Security-Security Guards

1. Kahns/Sara Lee Property

- Under the Ohio Administrative Code, Chapter 3745-352, Cessation of Regulated Operations (CRO) Rules, Section 3745-352-30, the County **must** provide security at the Kahns/Sara Lee Property due to the hazardous materials remaining on and in the site. The code requires:
 - ✓ Securing against unauthorized entry into each outdoor location of operation and each building or structure at the facility where regulated operations were conducted that contains or is contaminated with regulated substances by providing entry barriers, posting warning signs, and maintaining security measures as provided in this rule. To include: fencing, proper lighting and a surveillance system, and security through the employment of a guard or security service.

2. 237 William Howard Taft: TB Control and 250 William Howard Taft (Vaccine Storage).

- Under the Ohio Administrative Code, Sections 4729-33-03 Security and storage of dangerous drugs; 4729-9-02 Minimum standards for a pharmacy; 4729-9-09 Security of prescription blanks and D.E.A. controlled substance order forms; 4729-9-05 Security requirements (Pharmacy/Dangerous Drugs); 4729-33-03 Security and storage of dangerous drugs; 4729-9-11 Security and control of dangerous drugs; 4729-22-02 Security, storage, and sale (Medical Oxygen), the County is mandated to provide security which meets the "supervision and control" standards mandated by the code. TB Control is considered a medical facility and it houses a pharmacy, it is classified by the state of Ohio as a Clinical Pharmacy - Category Three. 250 William Howard Taft falls under the code because it is licensed by the state of Ohio as a Clinic - Category Two.

C. Criminal History Background Checks

Safety and Security manager oversees criminal history background checks required by Ohio Revised Code. To include:

- **Law Enforcement Automated Data System (LEADS):** Mandated by Ohio Revised Code § 5503.10 (Law Enforcement Automated Data System); Ohio Administrative Code, Chapters 4501:2-10 (Law Enforcement Automated Data System (LEADS)); 4501:2-10-01 (Definitions); 4501:2-10-02 (LEADS Steering Committee); 4501:2-10-03 (Participation in LEADS); 4501:2-10-04 (LEADS terminal agency coordinator (TAC)); 4501:2-10-06 (Dissemination and Record Keeping); 4501:2-10-07 (LEADS Audits); 4501:2-10-09 (National Crime Information Center (NCIC)); 4501:2-10-11 (Sanctions); 4501:2-10-13 (Participation Agreement), and federal law, under CFR Title 28-Judicial Administration, Part 20—Criminal Justice Information Systems,

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- ✓ All employees and contractors working in LEADS areas throughout the County must be cleared through a criminal history background check. See the Attached security briefing memorandum. LEADS Audits conducted bi-annually and as required by Ohio Revised Code 4501:2-10-07 (LEADS Audits), inspect for proper security and background checks. A violation would result in suspension of the County's ability to access LEADS, which would affect the Sheriff, Prosecutor's Office, and the Courts.
- **Hillcrest Training School:** Mandated by Ohio Revised Code 3319.39, as amended by House Bill 190 (2007), which as interpreted by the Hamilton County Prosecutor's Office, in pertinent part states as follows:
 - ✓ H.B. 190 has amended the criminal records check feature of R.C. 3319.39. The bill requires criminal records checks of all employees and job applicants hired by the board of education, educational service centers or chartered nonpublic schools. Prior to the amendment only those employees whose job duties entailed the care, custody, or control of children were required to have background checks. The bill, as amended, further requires that employers must request both BCII records and FBI records, regardless of how long an employee has resided in Ohio. Employees who are not licensed by the State Board of Education must have a background check repeated every five years. And lastly, the amendment specifically prohibits an employer from hiring or continuing to employ any person whose criminal records check reveals a conviction of, or plea of guilty to, any crime that disqualifies an individual from employment under R.C. 3319.39.
- **Other Contractors:** Mandated by Court recognized premises liability standards. All contractors performing work on behalf of the Department of Facilities undergo a criminal history background check. These checks screen out those persons whose criminal histories represent a threat to County property and/or employees. For example, convicted felons and sex offenders who may seek employment with a contractor in order to gain access to County buildings to carry out criminal conduct. Without these criminal history checks, the County would be compromising its property and employees.

BOCC RESOLUTIONS

The following are resolutions (copies in reference materials) that must be followed by the administrative staff that provides the services required to support the maintenance, design, construction, and/or renovation of a County building:

- Resolutions Adopting Hamilton County Risk Manual – Dated 4-5-1995, 5-31-1995, 10-27-1995, 10-4-1995, and 8-20-2003

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2. Who are the recipients of the service or activity for the non-mandated service? How many recipients?

- County Facilities Staff - 144
- County Employees – over 6,000
- Public – over 10,000 per workday
- Inmates and Juveniles – over 1,600

Please note any internal customers, other county departments, jurisdictions, businesses, etc. If the service is geographic specific (i.e., a satellite probation office), please identify the neighborhood, township or municipality.

- Board Of County Commissioners
- Auditor
- Administrative Services
- Board of Elections
- Budget and Strategic Initiatives
- Building Inspections
- CAGIS
- Cincinnati Museum Center (CMC)
- Communications Center (911)
- Community Development
- Coroner's Office
- Court of Appeals
- Court of Common Pleas
- Court of Domestic Relations
- Court Jury Commissioner
- CLEAR
- Clerk of Courts
- Economic Development
- Emergency Management Agency
- Engineer's Office
- Environmental Services
- Fairgrounds
- Family and Children First
- General Health District (Board of Health)
- Greater Cincinnati Automobile Dealers Association
- Homeland Security (Regional)
- Job and Family Services
- Juvenile Court
- Law Library
- Mental Retardation and Developmental Disabilities Board (MR/DD)
- Municipal Court
- Personnel
- Planning, Zoning and Community Development
- Probate Court
- Prosecutor's Office
- Public Works
- Public Defender's Office
- Purchasing
- Recorder's Office
- River City Correctional Center
- Sheriff's Office
- Soil and Water
- Treasurer
- Veterans Service Commission

3. Are there county revenues associated with the non-mandated services? If so, please provide the methodology for any lost revenues. Please consider state or federal reimbursements, grants, fees, etc. Please note if the service or activity is included in the county's indirect cost plan. - No

4. If the county did not provide the non-mandated service, is there the potential for increased expenditures in another jurisdiction within Hamilton County? If so, please list the specific municipality and/or township. - No

5. Does the non-mandated service include Board of County Commissioner policy via resolution or motion? – Yes – County Risk Policy via BOCC resolution

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6. Are there contracts or agreements that preclude the elimination of a non-mandated service? If so, please provide the specific language as to termination and/or amendment terms. - No
7. What are the equipment/non-personnel expenditure considerations with discontinuing a non-mandated service? (i.e., surplus equipment). - None
8. Do any of the non-mandated services include employees represented by a bargaining unit? If so, please note the union and provide information as to reduction-in-force and job abolishment considerations. - No
9. For positions within non-mandated services, are there are special circumstances that preclude a traditional job abolishment process? Separation costs will be addressed centrally including leave balance payouts, unemployment compensation and severance (based on current Commission policy). - No
10. In addition to positions associated with non-mandated services, the Budget Office included a review of management layers, support staff, and currently vacant positions. Please comment on the impact of eliminating these positions.

Without the position of the **Safety and Security Manager** the following would not be done, which would violate several State and Federal requirements which would put the BOCC into a legal liability:

- The management of safety and loss prevention programs, and security programs for the facilities department; safety and loss prevention programs include: safety training, accident investigation, inspection of facilities and operations, and ongoing assessment; security programs include: security training, investigations, inspection of facilities and security operations and ongoing risk assessment(s); ensures compliance and enforces safety and security regulations, policies, standards and guidelines (e.g., ORC, vehicle safety, Workers' Compensation, OSHA, PERRP, NIOSH, Lockout/Tagout, etc.); has authority to stop work in immanent danger situations and/or immediate danger to life or health conditions; consults with co-workers and supervisors regarding safety and security guidelines and regulations; administers contracts with consultants; works closely with Risk Manager and County Sheriff to manage programs; provides expert knowledge of current safety legislation and rules, and security systems; answers related questions and provides information to BOCC, elected officials, co-workers and supervisors; serves on committees and acts as liaison between County, State and City safety and law enforcement departments and officials; supervises staff; assists with development and management oversight of budget for areas of responsibility; manages key vendor performance, invoice processing and general procurement tasks (e.g., developing purchasing order criteria and statement of work requirements, etc).
- Development of department safety policy & procedures utilizing an understanding of OSHA, NEPA and other complex safety/environmental regulations and their application to departmental operations; reviews procedures to ensure safety and health of County employees and protection of property; instructs personnel on safe equipment operation, first aid and other safety procedures; checks and approves for

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use certain pieces of equipment or appliances, due to their inherently dangerous qualities or published standards.

- Conducting of safety inspections of departmental operations, County-owned/maintained facilities, and equipment; accompanies members outside of the county on all safety related inspections; ensures compliance with all OSHA regulations and other safety guidelines enforced by governmental agencies and staff; takes appropriate action to correct improper or unsafe work activities; reports any violations of safety regulations; advises management and staff regarding compliance issues; travels to various sites to investigate accidents involving department property and personnel and/or to conduct monthly safety audits; completes hazard assessments and instructs employees on types of protective equipment required; prepares reports and maintains related documentation (e.g., safety reports, accident reports, statistical reports, safety files, accident forms, fire drill evaluation reports, confidential occupational medical records, inspections by outside agencies for elevator, boiler, backflow preventers, etc.); manages documents to track progress or closure of investigation conditions.
- Responding to all accidents of a serious nature involving Facilities employees or property and supervises staff in the investigation of all accidents; ascertains the nature of injuries and seeks/provides medical care if necessary; interviews witnesses and employees and collects evidence to obtain facts about the incident; reviews employee drug test results after accident and/or injury; prepares written and oral reports and summaries regarding investigation; insures that all accident and injury reports are processed in a timely manner; participates in and testifies for outside litigation and civil cases; reports all accidents to appropriate official; investigates damage claims against department.
- Conducting and/or schedules safety training workshops for departmental personnel; assesses departmental training needs; develops employee training programs using local resources wherever possible; obtains training packages from equipment manufacturers and vendors; recommends the purchase of training equipment and materials; maintains employee training records for future reference and referral.
- Participates on task forces and committees; attends meetings and conferences; prepares, presents and monitors both security and safety programs and activities (e.g., safety awareness, department newsletter, suggestion box, etc.); manages employee absenteeism due to injury, accident and/or illness; follows all legal guidelines regarding workers' compensation, FMLA, and other work-related issues.

11. What is the performance impact of not providing the non-mandated service? For example, wait times, waiting lists, case loads, operating hours and other consequences of not providing the service.

Legal Lawsuits - Negligence

- The physical security provided in other county is required under case law formulated by Ohio Courts pertaining to premises liability and the duty owed to invitees and tenants occupying County buildings. The Ohio Supreme Court has long held that:
 - ✓ "[A] business owner [the County] has a duty to warn or protect its business invitees from criminal acts of third parties when the business

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owner knows or should know that there is a substantial risk of harm to its invitees on the premises in the possession and control of the business owner." See *Simpson v. Big Bear Stores Co.*, 73 Ohio St.3d 130, 1995-Ohio-203.

- ✓ "A business owner [the County] has the duty to warn business invitees of or to protect them from the criminal acts of third parties if the business owner knows, or, in the exercise of ordinary care, should have known of the danger to the invitee. *Howard v. Rogers* (1969), 19 Ohio St.2d 42, 47.
- The County is able to meet its duty under premise liability through physical security which provides knowledge to Department of Facilities personnel regarding substantial risk of harm to invitees and tenants. A few examples include:
 - ✓ A natural gas leak, or other potentially catastrophic event, which occurs at 2:00 a.m. would go unnoticed without the presence of physical security.
 - ✓ An unauthorized person entering a County building after hours would go unnoticed and pose a threat to employees and persons working after-hours in the buildings.
- Note that the County is not immune from civil action for failing to adhere to its duty under premises liability. Section 2744.02(B) of the Ohio Revised Code specifically states:
 - ✓ "Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

Other Factors Mandating Physical Security

- Reduced insurance premiums. The presence of physical security reduces the County's facility insurance requirements.
- County business and operations conducted after-hours. The following is a partial listing of buildings and the after-hour and weekend activities that occur in each:
 - ✓ 230 East Ninth Street: Prosecutor's staff and judges conduct work during weekday evenings and on weekends.
 - ✓ Justice Center: Conducts courts on weekends and at night.
 - ✓ 237 William Howard Taft: Court ordered child visitation during evenings and on Saturdays.
 - ✓ County Administration Building: CLEAR and other personnel occupying the ninth and tenth floors twenty-four hour, seven days a week basis.

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12. Are there any alternatives that result in savings to the general fund? – No, not at this time - In 2007, County Facilities maintenance functions were reviewed by the Competition and Efficiency Committee. The report found that County Facilities managed properties to the best, most cost-effective standards and recommended that “the County Administration should move forward with encouraging consolidating property maintenance within the Facilities Department to the largest extent possible.”

It is recommended that for each budget year the cost of providing in-house security vs. outsourcing be reviewed.

13. Are there more efficient ways to deliver a mandated service that may allow for the savings to offset the cost of a non-mandated service? - No
14. Is there an opportunity to transfer any non-mandated expenditures to another funding source (i.e., restricted fund or grant)? - No
15. Does your department have any fees that could be raised to offset the cost of a mandated service?
- No

Other Considerations and Comments: