

MEMORANDUM

TO: City of Detroit Charter Revision Commission

FROM: Lamont D. Satchel, Esq.
General Counsel

DATE: February 23, 2011

RE: Residency and Multi-Member Bodies Under the City Charter

Questions: Whether the City Charter can impose residency requirements for members of multi-member bodies (i.e. Commissions, Boards, etc.) in light of MCL 15.601 et seq., which prohibits city imposed residency requirements?

Whether §2-101 is broad enough to apply its residency requirement to members of multi-member bodies?

Brief Answers: The City Charter may and has imposed residency requirements for members of multi-member bodies.

Charter §2-101 has no application to members of multi-member bodies, as it expressly deals with elected and employees holding appointed positions.

INTRODUCTION

At its February 12, 2011 meeting the Commission, after deliberation on GOS 191, approved a motion directing staff to advise the Commission on whether a residency requirement can be imposed on members of multi-member bodies in light of MCL 15.601 et seq. (residency law) and more specifically whether §2-101 (the subject of GOS 191) was broad enough to require residency for multi-member bodies.

DISCUSSION

Multi-Member Bodies

Members of appointed boards, commissions (including advisory commissions created under §7-103) and other multi-member bodies are not subject to the residency law, MCL 15.601 et seq.,

which by its express terms deals with employees as it limits, with certain exceptions¹, “public employers” from making residency “a condition of employment or promotion.”

In fact, the current City Charter contains several boards and commissions that require residency, while others are silent, thus leaving it to the discretion of the appointing authority. (See representative sample below)

Board, Commission, Council or Committee	Residency	Appointment Authority
City Planning Commission (§4-401)	Residency required	Appointed by City Council. City Council members eligible for appointment.
Executive Planning Council (§6-206)	No residency requirement. Left to discretion of appointing authority.	Composed of specified department Directors and other appointees of Mayor
Citizen Advisory Commissions (§7-103)	Residency required, unless Mayor specifies in the executive order the reasons for allowing non-residents to serve.	Mayor
Board of Ethics (§2-106)	Residency required for the five (5) public members. Corporation Council and HR Director subject to 15.601 et seq. (i.e. City cant require residency for them)	Mayor
Civil Service Commission (§6-505)	Residency required.	Mayor appoints two (2) members and City Council appoints three (3) members. HR Director is ex-officio.
Historical Commission (§7-901)	No residency requirement. Left to discretion of appointing authority.	Mayor
Historic Designation Advisory Board (Ord. §25-2-35)	Residency requirement.	City Council
Public Lighting Commission (§7-1203)	Residency required.	Mayor
Board of Police Commissioners (§7-1102)	Residency required.	Mayoral appointment; City Council approval.
Transportation Advisory Board (§7-1402)	Residency required, unless Mayor specifies in the executive order the reasons for allowing non-residents to serve	Mayor
Health Advisory Board (§7-201)	Residency required, unless Mayor specifies in the executive order the reasons for allowing non-residents to serve	Mayor
Fire Advisory Commission (§7-805)	No residency requirement. Left to discretion of appointing authority.	Mayor

¹ MCL 15.602(2), (3) and (4) contain exceptions to the prohibition on residency requirements: (1) public employers may require residents to live within a distance of 20 miles or greater from its boundaries; (2) “volunteer or paid on-call firefighters”, “elected officials” and “unpaid appointed officials” are exempt; and (3) married couples who both work for public employers; under specified circumstances.

Recreation Advisory Commission (§7-1302)	Residency required because must be appointed from one of up to 8 established districts.	Mayor
Board of Water Commissioners (§7-1501)	Residency required for four (4) of the seven members.	Mayor
Human Rights Commission (§7-10020)	Residency required.	Mayoral appointment; City Council approval.

The charter provision allowing the Mayor to establish citizen Advisory Commissions (§7-103) contains an express requirement that members be city residents, unless the Mayor, in his executive order creating the commission specifies the reasons for allowing non-residents to serve.

Scope of §2-101 (Qualifications for Elective and Appointive Officers) Application

Section 2-101 of the City Charter sets forth the qualifications required of elected and appointed officers of the city. The residency requirement contained in the section expressly applies only to elected and appointed officers. It has no application to employees, members of multi-member bodies, or even now appointed officers as of the passage of MCL 15.601 et seq., which prohibits imposing residency requirements on these employees.

CONCLUSION

The City Charter may, and does for certain multi-member bodies, require that members be city residents. MCL 15.601 et seq. expressly deals with prohibiting residency requirements for employees and not non-employees who may serve on multi-member bodies.

Section 2-101 of the City Charter is not broad enough nor intended to impose residency requirements on members of multi-member bodies. This section sets residency requirements for elected and appointed officials. However, MCL 15.601 et seq. prohibits this section's residency requirement for appointed officials employed by public employers, and should be removed or modified to fit within an exception.