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## City of New Bedford

### Policy Concerning Waivers of the City's Residency Requirement

In 1977, the City of New Bedford enacted an ordinance requiring employees to reside in the City. (City Code, Article II, Section 19-20 et seq.) The residency requirement provides qualified New Bedford residents preference for jobs in city government, cultivates a municipal workforce committed to the City, helps preserve the City's middle class, and encourages reinvestment of employee wages in the City through consumer spending and the payment of property taxes.

The ordinance defines an employee subject to the residency requirement as any person who is:

- 1) Receiving monies from the City, subject to withholding taxes by the Commonwealth or Federal government.
- 2) Employed on a full- or part-time basis;
- 3) Appointed, re-appointed, elected or selected to serve on all authorities, advisory boards, boards, commission or committees, whether compensated or not for such service; or
- 4) In any program funded by the Commonwealth or any of its political subdivisions or authorities or the Federal government or any of its agencies.

An employee's residence is defined as the actual principal residence; that is, where the employee normally eats, sleeps and primarily maintains personal and household effects. Employees are required to notify the Personnel Department upon any change of the primary address. Failure to comply with the residency requirement is grounds for automatic termination.

Several categories of employees are exempt from the residency ordinance. First, union employees (e.g. police officers, firefighters, AFSCME members) are not subject to the residency ordinance because residency is addressed in various collective bargaining agreements and, pursuant to state law, the terms of a collective bargaining agreement supersede a city ordinance. Second, state law forbids municipalities from imposing employee residency requirements on school teachers and certain other school personnel. Third, the Solicitor's Office has opined that the residency ordinance should not be construed as applying to city employees who are paid by federal funds, such as the employees in the Department of Housing and Community Development, and to Port Authority employees. Finally, the residency ordinance does not, on its terms, apply to employees hired before its effective date of September 8, 1977.

Under Section 19-25, an employee may receive a waiver from the residency requirement "if the mayor and city council determine it to be in the best interest of the public do so," and upon approval by a two-thirds vote of the city council. The primary purpose of the waiver provision is to ensure that the residency requirement does not stand in the way of the city's ability to hire and retain the best qualified individuals.

Determining when it is "best interest of the public" to grant a waiver for an applicant who lives outside of the city or a current employee wishes to move out of the city while remaining a city employee requires a careful weighing of the important public interests underlying the residency requirement, on the one hand, and the city's need to attract and retain talent, on the other. In determining whether an applicant or employee should be granted a

residency waiver, the administration will review the totality of the circumstances in light of these competing goals and apply this policy in a manner that is consistent and fair.

For job applicants, the administration may request a waiver of residency if no New Bedford resident is equally qualified in the applicant pool, and the out-of-town applicant demonstrates a compelling need to remain in his or her current residence. The following examples, which are not exhaustive, illustrate how this policy would apply.

Example A. The most qualified job applicant lives within a reasonable commuting distance of New Bedford and would be required to sell her home to move here. A waiver of residency would be appropriate under such circumstances.

Example B. The most qualified job applicant lives with an elderly parent for whom the applicant is the primary caregiver. A waiver of residency would be appropriate under such circumstances.

Example C. The most qualified applicant would have to uproot her children from their local public schools to move here. A waiver of residency would be appropriate under such circumstances.

Example D. The most qualified applicant has a spouse whose job lies beyond commuting distance from New Bedford. A waiver of residency would be appropriate under such circumstances.

Example E. The most qualified applicant lives beyond a reasonable commuting distance and would be forced anyway to move to serve in the position. A waiver of residency would not be appropriate under such circumstances. The applicant would be required to move to New Bedford.

For existing employees who wish to move out of New Bedford and yet remain employed by the city, the administration may request a waiver if the employee can demonstrate that it would be unduly burdensome to remain a city resident. The following examples illustrate how this policy would apply.

Example A. An employee in good standing has a family member living outside the city for whom the employee has become a primary care giver. A waiver of residency would be appropriate under such circumstances.

Example B. An employee in good standing who lives in an apartment in the city marries someone who owns a house outside the city, and the couple wishes not to sell their house outside the city. A waiver of residency would be appropriate under such circumstances.

Example C. An employee in good standing wishes to move out of the city for a quality of life reason (e.g. perceptions of public safety or school quality, a larger yard, lower taxes). A waiver of residency would not be appropriate under such circumstances.

In most cases, the administration will submit requests for permanent waivers (that is, coincidental with the employee's term of employment), and such requests will specify why the administration believes the employee should receive a waiver. In some circumstances, a temporary waiver may be appropriate to address a temporary circumstance. For instance, a temporary waiver may be appropriate to provide an applicant adequate time to relocate to the City.

For both applicants and existing employees, if the basis of the waiver is later negated, the waiver will no longer apply, and the employee will be terminated, unless there are compelling circumstances justifying a waiver for a different reason. In that case, the administration may seek to obtain a new waiver from the City Council for the employee. For example, if an applicant were granted a waiver on the grounds that he would have to sell his house to move to New Bedford, and he later buys a new house in the same municipality and at that time has children in

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the local public schools, then the administration could seek a new waiver on these different grounds (i.e., that the employee now has children in the other municipality's public schools).

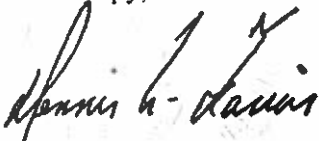
Employees who have waivers will be expected to notify their supervisors immediately if the circumstances justifying their waivers have changed. In addition, the Personnel Department will require employees who have waivers to certify annually that the circumstances justifying the waivers still exist.

**IN CITY COUNCIL, January 23, 2020**

Referred to the Special Committee on Waivers of Residency.

Dennis W. Farias, City Clerk

a true copy, attest:

  
City Clerk