



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

November 24, 2020

CITY CLERKS OFFICE
NEW BEDFORD, MA

2020 NOV 30 A 11:46

CITY CLERK

City Council President Joseph P. Lopes and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Lopes and Honorable Members of the City Council:

For the reasons set forth below, I hereby veto *An Ordinance Relative to Residency of City Personnel* (#1304), which the Council passed on November 12, 2020.

As you are aware, since 1977, the City has required employees to reside in New Bedford, with certain exceptions established under state law and in collective bargaining agreements with the City's public employee unions. (City Code, Article II, Section 19-20 et seq.). The purpose of the residency requirement is to advance certain important public interests; that is, it creates a hiring preference for qualified New Bedford residents, cultivates a municipal workforce committed to the City, and encourages reinvestment of employee wages in the City through consumer spending and the payment of property taxes. Several other cities, especially in the Northeast, have residency requirements that are similarly structured.

The City Code of course contemplates that under certain circumstances it may be in the City's interest to relieve an employee of the residency requirement, and thus authorizes the City Council to issue a waiver of the requirement upon a two-thirds vote. In determining whether to submit a waiver for the Council's consideration, my Administration has adhered to a policy that carefully weighs the importance of employee residency against the need for City government to retain and attract the highest qualified candidates to its ranks. It goes without saying that the quality of municipal services depends directly on the level of skill and dedication of City employees, and from time to time, applicants have raised legitimate reasons why they cannot move into New Bedford. The most typical scenario has been when an applicant is a resident of a surrounding town, but family circumstances, such as the prospect of having to uproot children from their schools, has made it unduly burdensome for the applicant to move to New Bedford. Rather than lose the applicant in those circumstances, we have requested a waiver from the Council. Conversely, in those instances in which an out-of-town applicant lives beyond commuting distance from the City and must move in any case to take the position, we have not sought a waiver of residency and insisted instead that the person live in New Bedford.

The approach has been consistently applied over the last nine years, and it has served its purposes. The City has been able to attract considerable talent to important government

positions, while relatively few waivers have been issued. Out of a city workforce of over a thousand employees, there are currently only forty-two (less than five percent) who are the subject of a residency waiver.

Nevertheless, for many years, certain councilors have contended that the Council is asked to approve too many residency waivers, a lament that at times has been echoed by some residents. The problem lay, I respectfully submit, in the Council's practice of approving waivers for a period of only one year. That most of employees who are subject to waivers must come back before the Council annually, even if there has been no change in their circumstances, creates the appearance that the Council is constantly approving waivers, when in fact the Council has been approving largely the same set of waivers again and again. Nothing in the code limits waivers to one year. The Council could easily cease this practice, and thereby greatly reduce the number of waivers it must consider.

I fear that the sweeping residency ordinance passed by the Council will at once undermine the important policy goals of the residency requirement and make it more difficult for the City to attract talent. The ordinance's central feature is to eliminate the residency requirement for non-union employees, and establish a ten percent reduction in pay for employees who live outside the city. There can be no doubt that this will make it more difficult for us to attract talented candidates. A mandatory reduction in compensation from what is already an uncompetitive salary scale is hardly an enticement for applicants who have other professional options – as all highly qualified professionals do. And it will also make it harder to attract candidates for historically hard-to-fill positions, such as paramedics or lifeguards.

The pay reduction does not appear to be based on any finding about the effect it actually would have. One would expect that such a radical policy departure would be grounded in an analysis of the experience of other cities with a similar policy, or perhaps a survey of current City employees about how a pay reduction might affect their residency preferences. The council has offered up no such evidence – or even pointed to another city that has adopted a measure like this – and so one can only guess as whether it will make it easier or harder to attract talent to city government. The implications of not gathering and analyzing evidence to understand how this new policy would work are potentially significant. If it turns out that a pay cut for non-residents would make it harder to hire qualified candidates, city services will be diminished.

It is also difficult to justify the inclusion of a provision that would lift the ten percent pay reduction once an employee reaches ten years of service. How does this serve the City's interests? Is it conceivable that a job candidate would be more willing to take the job if the pay cut ended some ten years later? The provision seems rather like a reward for longevity. I fully support incentivizing employee retention, but not if the "reward" is to permit employees to leave the city, not out of necessity, but by choice. As we all would agree, we should adopt no policy that would tend to disaffirm the notion that New Bedford is a great place to live.

Moreover, in seeming contradiction to the elimination of the residency requirement, the Council preserved the residency requirement for eight management positions and all members of city boards and commissions, and *made this requirement un-waivable*. The basis for the Council's carving out these particular positions in this way is not evident. For example, why the Parking

Supervisor or the Purchasing Agent must be a city resident, but not the Police Chief or Fire Chief, is hard to reconcile. Do the positions subject to this provision really demand a deeper connection to the City than those that were excluded? More important, the un-waivability of residency for positions that require considerable expertise raises real concerns. For example, by categorically requiring residency for the health director, the Council has assumed that an ample supply of people with backgrounds in epidemiology or infectious disease may be found in New Bedford (or that our salary scale would entice someone with that background to move here). Based on the last hiring process for that position, in which there was not a single qualified candidate from New Bedford, there is cause for concern.

As the ordinance applies only to non-union employees, it also treats management and labor inconsistently. Even if the ordinance is ultimately enacted, the City's collective bargaining agreements will still require residency. Currently the fire and police contracts require full residency for ten years, and AFSCME employees are required to live in the city for the duration of their employment. The ordinance inevitably, and understandably, will be viewed as unfair by union employees.

As the Council further deliberates on this measure, careful consideration of the core assumptions underlying the Council's policy determinations is necessary. At the top of the list are the following:

- Would New Bedford be the first city to enact a pay reduction for non-resident employees, and if not, have cities with a similar policy found that it has improved their ability to attract highly qualified candidates?
- How do we reconcile this ordinance with the vastly different treatment of certain employees still subject to residency requirements, namely union employees, as well as those with no limitation on residency, namely those in the Port Authority, School Department, and Department of Housing and Community Development?
- Can the Council achieve the solution it appears to seek, that is, the reduction in the number of waivers it must consider, simply by granting waivers so long as the basis for the waiver remains valid, rather than for one year or some other specified period?

I believe that such an analysis will lead to a better outcome, and I remain ready to engage the Council in this continuing discussion.

Sincerely,



Jon Mitchell



CITY OF NEW BEDFORD

In the Year Two Thousand and Twenty

AN ORDINANCE

RELATIVE TO RESIDENCY OF CITY PERSONNEL

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1.

Article II of Chapter 19 of the Code of Ordinances is hereby amended by striking said Article, in its' entirety and inserting, in place thereof, the following new Article:

ARTICLE II. – EMPLOYEE RESIDENCY.

Sec. 19-20. - Definitions.

As used in this article, the following terms shall have the respective meanings ascribed to them:

Employee: Any person:

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; or
3. Appointed, reappointed, elected, selected or chosen to serve on all authorities, boards, commissions or committees, whether compensated or not for such service.

Residence: The actual principal residence of the individual where such individual normally eats and sleeps and maintains such individual's normal personal and household effects. This article shall be deemed to affect both civil service and non-civil service employees of the city.

Sec. 19-22. - Maintenance of list of subject personnel.

The director of labor relations and personnel shall prepare and maintain a list of all persons subject to this article based on the position held by each respective person.

Sec. 19-23. – Residency and compensation.

1. All employees employed by the city shall receive the ordinary and regular compensation for the position held if said employee maintains their residence in the city.
2. Any employee who is not maintaining residence in the city and has not attained 10 years of total employment service to the city shall receive compensation equal to the ordinary and regular compensation for the position but adjusted by reducing said ordinary and regular compensation by 10%.
3. For any employee having their salary adjusted pursuant to paragraph 2 of this section, the adjustment shall no longer be applied upon either of the following occurring: -
 - (a) the employee attaining 10 years of total employment service to the city
 - or
 - (b) the employee becomes a resident of the city.
4. Every person who is reappointed, elected, selected or chosen to serve on an authority, board, commission, or committee, whether compensated or not for such service, shall maintain residence in the city regardless of whether said person has attained 10 years of service. This provision shall not apply to persons who are employed by the city on a part-time or full-time basis and by virtue of such employment are appointed to serve in an ex officio basis on an authority, board, commission, or committee.
5. Any person holding any of the following positions shall be required to live in the city of New Bedford and the provisions of section 19-23 (2) and (3) shall not apply: -
 - Administrative Assistant to the Board of Assessors;
 - City Planner;
 - Director of Human Resources/ Director of Personnel;
 - Director of Public Health;
 - Director of Purchasing/ Purchasing Agent;

First Assistant City Solicitor;
Parking Supervisor

19-24. - Exemptions.

The following shall be exempt from the provisions of section 19-23 (1) and (2).

1. Any person who is employed by the city on June 30, 2020 and who has received a waiver to the residency requirements in effect on June 30, 2020.
2. Any person receiving a waiver pursuant to section 19-25 during the duration of said waiver.

Sec. 19-25. - Waiver authorized.

In the event that the mayor and the city council determine it to be in the best interest of the public to do so, the provisions of section 19-23 (1) , (2) and (5) may be waived for a period of 6 consecutive months with respect to a particular person by a two-thirds (2/3) vote of the city council. At the end of the 6 consecutive months of any approved waiver, the mayor and city council by 2/3 vote may extend the waiver to an additional 6 consecutive months if necessary. No person or employee shall receive more than 1 waiver and 1 extension. The employee shall receive the ordinary and regular compensation for the respective position during the time such waiver is effective. Such waiver shall not act to defeat the application of this article to every other person.

Sec. 19-26. – Notice of residency/filing certificate annually.

It shall be the responsibility of the employee to immediately notify their department head or like officer if they cease to maintain or establish residence in the city. Failing to do so may be grounds for termination.

In any event, annually, on July 1, every person subject to this article shall file with each such person's department head or like officer, a certificate signed under the pains and penalties of perjury, stating such person's name and place of residence as defined herein. Each department head shall forward all certificates to the director of labor relations and personnel.

The compensation of the employees who have not attained at least 10 years of employment service to the city who were so employed and have ceased to be residents of the city shall have their compensation adjusted pursuant to section 19-23 (2). The director of labor relations and personnel shall transmit the names of the employees, their respective position and the effective date of the adjustment or removal of an adjustment to the mayor and the city council.

Sec. 19-27. - Validity.

In the event that this article shall be deemed to be in conflict with a provision of any general or special law, the provision of that general or special law shall govern and shall not defeat the application of this article with respect to any position not governed by the law. Any action of a court of competent jurisdiction declaring this article invalid with respect to any position or person shall not be held to apply to any other person or position.

SECTION 2. Section 10-93 of Chapter 10 of the Code of Ordinances is hereby amended by striking, in the first sentence, the words "a resident of the City of New Bedford,"

SECTION 3. Section 19-2 of Chapter 19 of the Code of Ordinances is hereby amended by striking, in the first sentence, the words "a resident of the city,"

SECTION 4. Section 10-51 of Chapter 10 of the Code of Ordinances is hereby amended by striking said section in its' entirety and inserting, in place thereof the following section:

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Sec. 10-51. - Purchasing agent—Appointment; qualifications.

The executive officer of the purchasing department shall be the purchasing agent, who shall be appointed by the mayor subject to confirmation by the city council and shall qualify by oath before entrance upon the duties of the office. The purchasing agent shall have not less than five (5) years of general diversified business experience, which shall include experience in the purchasing of commodities.

SECTION 5. Section 2-82 of Chapter 2 of the Code of Ordinances is hereby amended by striking, in the first sentence, the words "and must be a resident of the city"

SECTION 6. Subsection (a) of Section 2-47 of Chapter 2 of the Code of Ordinances is hereby amended by striking the words "shall be subject to residency requirements under chapter 19 article II"

SECTION 7. Section 23-1 of Chapter 23 of the Code of Ordinances is hereby amended by striking the first sentence and inserting in place thereof, the following sentence: -

"The mayor with the approval of the city council shall appoint the parking supervisor."

Section 8.

This ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.