



MEMORANDUM

To: Mayor Weir and Members of the Independence City Council; Zach Walker, City Manager
From: Shannon Marcano, Independence City Counselor
Date: October 16, 2020
Re: Proposed Resolution regarding residency requirement for certain city employees

It has come to my attention that a resolution, entitled “A RESOLUTION REQUIRING EXECUTIVE LEVEL EMPLOYEES TO BE RESIDENTS OF THE CITY OF INDEPENDENCE, MISSOURI.” (the “Resolution”) has been placed on the October 19, 2020, Independence City Council Agenda for consideration by the Mayor and City Council.

The Resolution provides the following:

SECTION 1. That residency in the City of Independence, Missouri, during tenure in office, be a requirement of all those who hold the positions of Assistant City Manager or Director/General Manager of an Administrative Department, as well as any positions with a residency requirement per the City Charter.

SECTION 2. That with the passing of this resolution those who hold these positions, but do not currently reside within the city shall have six months to establish and prove residency.

As City Counselor, I would like to express my concerns with this Resolution.

1. Section 3.3 of the Independence City Charter (the “Charter” describes the powers and duties of the City Manager. “The city manager shall be chief administrative officer and head of the administrative branch of the city government.” Subsection 2 states that the City Manager shall “[s]upervise and control, directly or indirectly, all administrative departments, agencies, officers and employees of the city” Further, Section 2.15 of the Charter is entitled “Council not to interfere with administrative service.” It goes on to say that “Councilmembers shall not... participate in any manner in the appointment or removal of officers and employees of the city.” These sections when read together make



it clear that all personnel decisions are solely the City Manager's responsibility (with the exception of City Council appointed positions). I believe this would include residency requirements. In my opinion, the City Council cannot direct the matter of city employee residency, as it would be a violation of the Charter.

2. The residency requirement, if desired by the City Manager, should be codified in the City's Personnel Policies. This item would need to be reviewed as an amendment to the Personnel Policies, and the proper process followed in order to obtain approval of that amendment, beginning with a review and recommendation by the Personnel Board. However, even if an amendment to the City's Personnel Policies was not desired, Section 3.29 of the Charter provides that the Personnel Board shall: (1) Advise the council, the city manager and the personnel director on matters relating to personnel administration. I believe an employee residency requirement would still fall under the Personnel Board's purview, regardless of whether it is in the form of an amendment to the Personnel Policies.
3. It is my opinion that the residency requirement as drafted and as applied to current employees poses a significant legal risk to the City. Current employees accepted their positions with the understanding that they did not have to reside within City limits. The Resolution allows for a 6 (six) month grace period for current employees to relocate into the City. However, I do not believe the grace period would mitigate the legal risk. The retroactive application of the residency requirement violates the terms of current employees' employment. In addition, there may be an issue with imposing this requirement on certain classes of employees and not others (equal protection) but this would require additional research.

Thank you for your consideration of these points.