

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

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100 N. Holliday Street  
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Baltimore, Maryland 21202

February 9, 2018

The Honorable President and Members  
of the Baltimore City Council  
Attn: Natawna B. Austin, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 17-0170– City Officials - Residency Requirements

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0170 for form and legal sufficiency. The bill requires certain City officials, defined as a head of an agency who reports directly to the Mayor and any at-will supervisory employee, to be residents and registered voters in the City within 6 months of appointment. Failure to comply with the residency requirement results in automatic termination of the appointment.

Md. Ann. Code, Local Gov. Art., Sec. 1-201 regulates residency requirements for local government employees. This law prohibits local governments from requiring its employees to reside in the jurisdiction that employs them. In 2017, an exception was approved by the General Assembly that states:

A county or municipality may require an at-will supervisory employee to reside in the State, county, or municipality or within a specified distance of the State, county, or municipality as a condition of employment if the at-will supervisory employee reports directly to the head of a unit of the county or municipality.

Generally, residency requirements for government employees are legally sufficient under constitutional provisions. Under a 14<sup>th</sup> Amendment Equal Protection analysis, if a residency requirement is a continuing residency requirement, there is not violation of the 14<sup>th</sup> Amendment Equal Protection clause and a rational basis for such requirements does exist. See *McCarthy v. Phil. Civil Serv. Comm.* 339 A2d 634 (1975 and *McCarthy v. Phil. Civil Serv. Comm.* 96 S.Ct. 1154 (1976).

This bill, however, exceeds the scope of the State enabling legislation. First, the bill defines “official” to include the head of an agency who reports directly to the Mayor. The exception in Sec. 1-201, however, only grants authority to impose the residency requirement on “at-will supervisory employees who report directly to the head or a unit of a county or municipality.” In

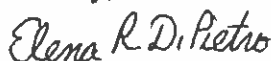
addition, agency heads are already exempt from the general prohibition in the State law under Sec. 1-201(a). The language referring to agency heads should, therefore, be stricken.

The bill also exceeds the authority granted in the enabling legislation by requiring that the covered employees become registered voters in the City. The enabling legislation only authorizes the imposition of a residency requirement not a requirement compelling covered employees to register to vote. The City Council is therefore not authorized to require voter registration in this bill. This requirement would also exclude from City employment anyone who is not eligible to register.

Another concern is that the bill could be interpreted to exclude from supervisory positions current employees who may be promoted in the course of their careers to such a position but would be ineligible because they are not City residents. Section 2 of the bill states "that this ordinance applies only prospectively and may not be applied or interpreted to have any effect on or application to the continued employment of any individual employed by the City before the effective date of the ordinance." This does not clearly cover the scenario described above. The following language could be added to Section 2 to clarify this issue: "Furthermore, any individual employed by the City before the effective date of this ordinance need not be a City resident to be eligible for any future supervisory position that is subject to the ordinance."

The Law Department cannot approve the bill for form and legal sufficiency unless the bill amended as provided above. Proposed amendments are attached.

Sincerely,



Elena R. DiPietro  
Chief Solicitor  
Division Chief

cc: Andre M. Davis, City Solicitor  
Karen Stokes, Director, Mayor's Office of Government Relations  
Kyron Banks, Mayor's Legislative Liaison  
Ashlea Brown, Assistant Solicitor  
Hilary Ruley, Chief Solicitor  
Victor Tervalva, Chief Solicitor

Law Department's Proposed Amendments to City Council Bill 17-0170

1. On page 2, strike line 8.
2. On page 2 in lines 13, 16, and 22, strike "and registered voter."
3. On page 2, line 30 after "Ordinance." insert "'Furthermore, any individual employed by the City before the effective date of this ordinance need not be a City resident to be eligible for any future supervisory position that is subject to the ordinance.'"