

**AN ORDINANCE TO AMEND CHAPTERS 2 AND 40 OF THE CITY CODE TO EXEMPT EMPLOYEES IN APPOINTED SERVICE FROM THE CITY'S RESIDENCY REQUIREMENT**

#0216

Sponsor:

Council  
President  
Congo

WHEREAS, pursuant to H.B. 422 (151st) and 22 Del. C. § 811, the City has been granted the authority to determine the residency requirements for its non-elected employees; and

WHEREAS, Wilm. C. § 40-6 defines "Appointed service" as including "all executive and support staff legally appointed to their positions pursuant to city charter section 7-101 and who serve at the pleasure of the appointing officer, but does not include members of boards or commissions"; and

WHEREAS, pursuant to Wilm. C. (Charter) § 9-100, employees in appointed service may be fired at will and do not possess a right to continued employment; and

WHEREAS, historically, the City has struggled to find and retain qualified candidates to fill appointed service positions; and

WHEREAS, City Council and the Administration believe exempting employees in appointed service from Wilm. C. § 40-3's residency requirement will increase the applicant pool and competitiveness of hiring, which will result in better service to City residents; and

WHEREAS, City Council deems it necessary and appropriate to amend Chapters 2 and 40 of the City Code to exempt employees in appointed service from Wilm. C. § 40-3's residency requirement, as well as remove the outdated reference to Wilm. C. (Charter) § 3-304 where appropriate and correct the references to the "director of personnel," "personnel director," and "personnel department."

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** Chapter 40 (“Personnel”), Article I (“Personnel Code”), Division 1 (“In General”) of the City Code is hereby amended by removing the stricken language and adding the underlined language as follows:

**Sec. 40-3. - Residency requirement; annual declaration.**

- (a) All elected officers of the city shall be residents of the city for the term of their office and as otherwise required by law. Non-elected regular employees, excluding employees in appointed service, shall acquire residency in the city within six months of employment, and shall not be required to be residents of the city at the time of hiring. However, a preference for applicants or prospective employees who are bona fide city residents will be granted as specified in section 40-4 of this article.

[ . . . ]

- (c) All regular city employees, excluding employees in appointed service, shall file an annual declaration of residency, pursuant to city code chapter 2, section 2-151.

**Sec. 40-4. – Preference for employment of residents.**

The ~~personnel~~ department of human resources and each appointing authority in city government, including the mayor and department heads and the director of ~~personnel~~ human resources, shall grant a preference for the employment in the appointed and classified services of applicants or prospective appointees who, at the time of their application, employment, or appointment to a position in city government, are bona fide residents of the city or have met the city’s residency requirement ~~pursuant to city charter section 3-304~~. In cases where residents and nonresidents are equally qualified for particular vacant positions, the city resident will receive first consideration in filling such vacant position.

**SECTION 2.** Chapter 2 (“Administration”), Article IV (“Officers & Employees”), Division 1 (“Generally”) of the City Code is hereby amended by removing the stricken language and adding the underlined language as follows:

**Sec. 2-151. – Employees’ annual declaration of residency; officer and employee residency review board.**

- (a) ~~In order to secure compliance with the charter residency requirement, section 3-304, a~~All elected or appointed officers and all employees, excluding employees and officers in appointed service, shall annually file a declaration of residency. This declaration shall be filed with the director of ~~personnel~~ human resources,

not later than the last day of January, on a form approved by the administrative board.

- (b) Failure to file such declaration or making a false statement therein shall be cause for disciplinary action, up to and including discharge. Any elected ~~or appointed~~ officer or any employee who is found to have made a false written statement on any declaration of residency form required by this section with the intent of deceiving his employer or those persons who administer and enforce the provisions of this section in order to avoid compliance with the residency requirement shall be immediately dismissed from employment by the city.

[. . .]

- (d) Whenever it shall appear, from the declaration or otherwise, that an officer or employee is not in compliance with the ~~charter~~ residency requirement, a discharge proceeding shall be commenced.

- (e) In addition to the annual declaration required pursuant to subsection (a) of this section, during any year between the filings in January of such annual declarations, each employee shall notify in writing the ~~personnel~~ director of human resources of any change of address of residency from that stated in his most recent annual declaration within 14 days following such change, whether the new address is in the city or outside of the city, including any temporary change of residence due to spousal separation, divorce, death in the immediate family or other reason, but not including any temporary change of residence during vacation, travel or other reason that is clearly not of an actually or a potentially permanent nature. Failure to notify the ~~personnel~~ director of human resources as aforesaid shall be cause for disciplinary action, up to and including discharge.

[. . .]

- (g) The city hereby directs that any and all officers and employees (“employees”) who are not in compliance with the city’s employee residency requirements, whether intentionally or unintentionally, shall be given one opportunity within 30 days of passage of the Substitute No. 1 to Ord. No. 05-049 to bring themselves into compliance with the requirement, without any inquiry or finding as to why the employee is not in compliance at the time.

The procedures, terms and conditions for employee compliance shall be as follows:

- (1) Each such employee shall provide a signed statement to the residency review board, through the director of ~~personnel~~ human resources, simply noting a belief that he or she may not be in compliance and without having to state any reason whatsoever as to why he or she believes this to be true.

(2) The aforesaid statement must be received by the residency review board, through the director of ~~personnel~~ human resources, within five working days after the effective date of the ordinance from which this subsection derives. (Substitute No. 1 to Ordinance No. 05-049).

(3) Within 30 calendar days after the said effective date, each such employee shall provide the residency review board, through the director of ~~personnel~~ human resources, with a signed declaration that he or she is in compliance with the residency requirement.

**SECTION 3.** This Ordinance shall become effective immediately upon its passage by City Council and approval by the Mayor.

First Reading.....August 25, 2022  
Second Reading.....August 25, 2022  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance amends Chapters 2 and 40 of the City Code to exempt employees in appointed service from Wilm. C. § 40-3's residency requirement and removes the outdated reference to Wilm. C. (Charter) § 3-304 where appropriate. In addition, this Ordinance corrects the former titles of "director of personnel" and "personnel director" to "director of human resources" as well as the former department name "personnel department" to "department of human resources."