

SUBSTITUTE NO. 1 TO ORDINANCE NO. 22-035

**AN ORDINANCE TO AMEND CHAPTERS 2 AND 40 OF THE CITY CODE
TO EXEMPT NON-ELECTED EMPLOYEES FROM THE CITY'S
RESIDENCY REQUIREMENT**

**Rev. 2
#0216**

Sponsor:

**Council
Member
Mills**

WHEREAS, on July 27, 2022, Governor John C. Carney, Jr. signed Delaware House Bill 422 into law, which amended City Charter Section 3-304(b) to grant the City the authority to determine the residency requirements for its non-elected employees; and

WHEREAS, the City has historically struggled to find and retain qualified candidates to fill non-elected positions; and

WHEREAS, City Council and the Administration believe removing the City's residency requirement for non-elected employees 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 (i) exempt non-elected employees from the City's residency requirement, (ii) dissolve the City Officer and Employee Residency Review Board, and (iii) delete the requirement to file an annual declaration of residency with the Department of Human Resources.

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

SECTION 1. Chapter 40 of the City Code is hereby amended by amending Sections 40-3 and 40-4 thereof by adding the underlined language and deleting the stricken language to read as follows:

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

- (a) All elected officers of the city, as defined by the city charter, shall be residents of the city for the term of their office and as otherwise required by law. Non-elected ~~regular~~ employees ~~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.~~

~~(b) Notwithstanding the provisions of this section, and in accordance with 22 Del. C. § 841, any non-elected employee who was employed as of January 28, 1998, who at that time had at least 12 years of service for the city, shall not be required to become or remain a resident of the city during his/her employment; no non-elected employee who is/was hired, rehired, or reinstated after January 28, 1998, who has an aggregate of 15 years of service for the city, shall be required to become or remain a resident of the city during his/her employment.~~

~~(c) All regular city employees 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 of the City Code is hereby amended by amending Sections 2-151 and 2-345.1 thereof by adding the underlined language and deleting the stricken language to read as follows:

Sec. 2-151. ~~Employees' annual declaration of residency; officer and employee residency review board.~~ Reserved.

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

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.~~
- ~~(c) Making a false written statement on the declaration shall constitute the misdemeanor of making a false written statement, and the declaration form shall bear such warning.~~
- ~~(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 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 as aforesaid shall be cause for disciplinary action, up to and including discharge.~~
- ~~(f) There is hereby established a city officer and employee residency review board (“residency review board”) to be comprised of 11 members. The members of the residency review board shall be the city auditor, the finance director, and the administrative assistant to the mayor, and two other administration representatives designated by the mayor, one member representative of each of the four city employee collective bargaining units (“union representatives” as hereinafter further defined) and two residents of the city who shall not be city employees, who shall be qualified electors of~~

~~the city and who shall be appointed by the mayor, be confirmed by resolution approved by a majority of all members of council, and serve at the pleasure of the mayor. The four “union representatives,” to be selected by each union's membership, shall serve for terms of one year each. The residency review board shall have authority to review all matters of administration and enforcement of the requirements of this section and of section 3-304 of the city charter. In its review of any such matter, the residency review board may make findings of fact and conclusions of law and its determination and decision shall be final. The residency review board may adopt such procedures and forms as it may deem necessary, subject to approval of the administrative board.~~

- ~~(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, 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, 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, with a signed declaration that he or she is in compliance with the residency requirement.~~

Sec. 2-345.1. - Financial disclosure requirements of elected officials and certain appointed officers.

(a) *Findings.* The purpose of this section is to require annual financial disclosure by elected officials and appointed officials and certain city employees and members of boards and commissions.

(b) *Applicability.* The requirements of this section shall be applicable to “filers” defined as all elected officials, appointed officials, members of the boards and commissions listed below and any city employee or member of the boards and commissions designated by rule of the ethics commission. The enumerated boards and commissions are as follows:

Audit Review Committee

Board of License and Inspection Review

~~City Officer and Employee Residency Review Board~~

City Planning Commission

Wilmington Design Review and Preservation Commission

Wilmington Ethics Commission

Wilmington Water, Sewer, and Stormwater Citizens Advisory Board

Zoning Board of Adjustment

SECTION 3. This Substitute 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 _____, 2023.

Mayor

SYNOPSIS: This Substitute Ordinance amends Chapters 2 and 40 of the City Code to exempt City employees, other than elected officials, from the City’s residency requirement. This Substitute Ordinance also eliminates the City Officer and Employee Residency Review Board and the requirement to file an annual declaration of residency with the Department of Human Resources. Finally, as housekeeping matters, this Substitute Ordinance eliminates outdated references to City Charter Section 3-304(b) and updates the names of the Human Resources Department and its director. It also changes the name of the sponsoring Councilmember.

FISCAL IMPACT: This Substitute Ordinance has no anticipated fiscal impact.

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