

TO: City of Flint Charter Revision Commission
FROM: Andrew Rising, University of Michigan Gerald R. Ford School of Public Policy
SUBJECT: Residency Qualifications of City Officials
DATE: April 1, 2016

Overview

Prior to 1999, residency restrictions for appointed officials and city employees were common in charters across Michigan. Following the passage of the Residency of Public Employees Act (*MCL 15.601, et al.*), such requirements became inconsistent with state law. Cities with unrevised charters have often left their residency restrictions in their charter text with the recognition that such provisions are no longer legally binding, while cities with recently revised charters have modified their residency provisions to comport with current law while allowing for the possible future amendment or repeal of MCL 15.601. The main takeaway for cities like Flint is that it is easier for state law to change (possibly allowing the return of residency requirements in the future) than it is for the charter to be amended. If residency qualifications are a desired feature, the charter should respect the current law, but allow for their possible imposition at a later date if or when state law changes.

Relevant State Law

Residency of Public Employees Act, *MCL 15.601, et al.* (See Appendix for full text)

“An act to restrict certain governmental entities from requiring individuals to reside within certain geographic areas or specified distances or travel times from their place of employment as a condition of employment or promotion.”

Analysis

The Residency of Public Employees Act forbids a public employer from enacting a residency requirement for employees or appointees. However, the law does allow an employer to require that an appointee or employee reside within 20 or more miles of the city boundary, and allows for residency requirements of any distance for firefighters, unpaid appointees, and elected officials.

Case Study

Detroit

In their 2012 revision the Detroit charter commission debated two methods of approaching the restrictions placed upon their actions by state law:

1. Retain the original 1997 language requiring appointed city officials to hold residency within the city of Detroit, with the addition of a clause recognizing the supremacy of state law and the Residency of Public Employees Act¹ (not enacted)

¹ <http://www.detcharter.com/archive/recommendedRevisions/GOS%20166.pdf>

“A person must be a citizen of the United States, a resident and a qualified and registered voter of Detroit, and domiciled within the City of Detroit, at the time of assuming the duties of, and while holding, any appointive city office. However, this requirement does not preclude an appointive officer who is assigned to a work location outside the city from using a residence outside of the city. This provision shall not apply if otherwise prohibited by state law.”

The commission hoped that this approach would express the sentiment of the city in urging future appointed officers to reside within its boundaries while conceding the supremacy of state law. This approach also recognizes that state law may be altered more easily than the charter, and provides a mechanism whereby the city’s residency requirements would automatically take effect if state law were to change in the future.

2. Change the charter provision to reflect the limitations given by current state law² (enacted)

“For any appointive city office, a person must be qualified to perform the duties of the office at the time of assuming the office and at all times while holding the office. The person’s citizenship, residence and voter registration status shall be as required or permitted by this Charter or applicable law.”

This approach avoids any contradiction with the Residency of Public Employees Act, but avoids referencing specific statute or requirements (referencing “applicable law” in general) to allow for adaptation if state residency laws change in the future.

The Detroit City Charter Commission selected option (2), changing the charter provision to reflect the limitations given by the Residency of Public Employees Act.

Bottom Line

The charter must account for state law and recognize its inability to set residency requirements of less than 20 miles from city borders for city employees or paid appointees. However, since state law is easier to change than the charter, the new residency provision should avoid referencing specific requirements set by the Residency of Public Employees Act, and instead recognize state supremacy while allowing for future qualifications in the event that state law changes.

² http://www.detcharter.com/charter/pdf/2012-Detroit-Charter_Comm.pdf

Appendix

Residency of Public Employees Act (MCL 15.601, et al.)

History: 1999, Act 212, Eff. Mar. 10, 2000.

AN ACT to restrict certain governmental entities from requiring individuals to reside within certain geographic areas or specified distances or travel times from their place of employment as a condition of employment or promotion.

The People of the State of Michigan enact:

15.601 Definitions.

Sec. 1. As used in this act:

(a) "Public employer" means a county, township, village, city, authority, school district, or other political subdivision of this state and includes any entity jointly created by 2 or more public employers.

(b) "School district" means a school district, local act school district, or intermediate school district as those terms are defined in the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, or a public school academy established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

15.602 Residency requirements of public employees.

Sec. 2. (1) Except as provided in subsection (2), a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2) Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However, the specified distance shall be 20 miles or another specified distance greater than 20 miles.

(3) A requirement described in subsection (2) does not apply to a person if the person is married and both of the following conditions are met:

(a) The person's spouse is employed by another public employer.

(b) The person's spouse is subject to a condition of employment or promotion that, if not for this section, would require him or her to reside a distance of less than 20 miles from the nearest boundary of the public employer.

(4) Subsection (1) does not apply if the person is a volunteer or paid on-call firefighter, an elected official, or an unpaid appointed official.

15.603 Applicability to certain employment contracts.

Sec. 3. This act applies only to employment contracts entered into, renewed, or renegotiated after the effective date of this act, in accordance with the prohibition against impairment of contracts provided by section 10 of article I of the state constitution of 1963.

TO: City of Flint Charter Revision Commission

FROM: Jennifer Mann, University of Michigan Gerald R. Ford School of Public Policy

DATE: April 1, 2016

Overview

In an effort to present the commission with options for how to approach specifying professional qualifications for key city officials within a charter, I reviewed several Michigan City charters to determine trends. The key takeaway is that there is no one approach to including qualifications in a charter. Michigan cities utilize a wide array of language and differ greatly in how many professional specifications they outline in their charters.

Trends

The most frequently specified professional qualifications are those for City Attorney and Auditor or Comptroller positions. Charters often list that the attorney must be licensed and able to practice in the state of Michigan, and budget personnel should be certified public accountants. In City Manager style governments, like Port Huron noted below, the City Manager role often has a professional qualifications provision in the charter, though the specifics vary between cities. One of the most common qualification provisions in a charter is to note that City Council will be the sole judge of the qualifications of its own members. This language is used by multiple cities and is included in the Michigan Municipal League Charter Revision Handbook [See Source List].

Analysis

There are strengths and weaknesses to providing specific professional qualifications for city officials. While specifications within a charter can help ensure candidates with the correct professional experience and goals find their way to the right roles, there can be drawbacks. One potential issue is that greater specification of professional qualifications can limit the overall applicant pool and make it difficult to recruit for certain roles. In addition, specifications can politicize the process of appointing officials, as they can be seen as a move to make it more difficult for certain individuals to be eligible. It is important that whatever specifications are outlined, the city charter still provides flexibility so that politicization and recruitment issues are minimized.

Professional Qualifications Specified by Selected Cities

Detroit

Detroit's charter specifies professional qualifications for a few city officials, including:

- The Human Resources Director shall have at least five years experience in personnel administration.
- The Auditor General and Deputy Auditor General must be certified public accountants

- The Corporation Counsel and the Deputy Corporation Counsel must be attorneys licensed to practice in Michigan.
- The Inspector General shall be a person who:
 - Has a bachelor's degree from an accredited institution of higher learning.
 - Has at least ten (10) years of experience in any one, or combination of, the following fields:
 - As a federal, state or local law enforcement officer;
 - As a federal, state or local government attorney, including a public defender;
 - As a federal or state court judge;
 - Progressive supervisory experience in an investigative public agency similar to an inspector general's office;
 - Has managed and completed complex investigations involving allegations of fraud, theft, deception and conspiracy; and
 - Has demonstrated the ability to work with local, state and federal law enforcement agencies and the judiciary.

*Grand Rapids*ⁱⁱ

Grand Rapids' charter specifies qualifications for city officials, including:

- The City Attorney shall be an attorney admitted to practice in the Courts of the State of Michigan.
- Deputy City Comptroller shall be an experienced accountant.
- The Health Officer must have recognized ability in public health work and be a graduate of a legally authorized medical school, and a registered physician in good standing.
- The City Physician shall be a registered physician in good standing.
- Supervisor of Social Service must have attained a standard of training represented by completing a university course in social economy or the prescribed course of a reputable school of social economy or the equivalent of either in private study and actual social work.

*Port Huron*ⁱⁱⁱ

Port Huron's charter includes qualifications for the city manager:

- The City Manager shall be chosen on the basis of his or her executive and administrative qualifications with special reference to his or her training and actual experiences in municipal administration.
- The City Council shall be the sole judge of the election and qualification of its own members, subject to review by the courts.

Pontiac^{iv}

Pontiac includes very little in terms of specifics for city officials listed in the charter:

- The director of the law department must be an attorney licensed to practice in Michigan and shall be called the "City Attorney"

Livonia^v

Livonia includes a provision that City Council is the only judge of qualifications for city officials:

- The Council shall be the sole judge of the eligibility and qualifications of its own members, subject to review by the Courts.

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Resources

- **Michigan Municipal League Charter Database.** The Michigan Municipal League maintains a charter database of Michigan's cities. It contains 272 city charters with the ability to search by the following categories: elections, council, mayor, other officials/operations, fiscal, ethics, charter or demographic data. Access the database here:
<https://www.mml.org/resources/information/charter/charter-elections-search.php>
- **Michigan Municipal League Charter Revision Handbook.** An extensive handbook compiled by the Michigan League, the Charter Revision Handbook is intended to help inform the charter revision process with chapters covering topics on the structure of local government, critical decisions for charter commissions, publicizing the work of the Charter Commission and the politics of selling the new charter to the community. It also contains a list of Michigan cities that have undergone charter revisions. The Charter Revision Handbook can be found here: https://www.mml.org/pdf/charter_revision/charter_handbook.pdf

ⁱ http://www.detroitmi.gov/Portals/0/docs/Publications/COD%20Charter/2_29_2012_Charter_Document_2_1_WITHOUT_COMMENTARY_1.pdf

ⁱⁱ <http://www.mml.org/resources/information/charter/pdf/201.pdf>

ⁱⁱⁱ <http://www.mml.org/resources/information/charter/pdf/406.pdf>

^{iv} <http://www.mml.org/resources/information/charter/pdf/402.pdf>

^v <http://www.mml.org/resources/information/charter/pdf/287.pdf>

To: City of Flint Charter Revision Commission

From: Corey Ackerman and Caitlin Jacob, Ford School of Public Policy, University of Michigan

Date: March 30, 2016

Re: Office of the Ombudsman Research

The Office of the Ombudsman is intended to respond to citizen complaints against city government departments and agencies. The Office of the Ombudsman was included in the 1974 charter and was later eliminated by an order of the Emergency Manager Michael Brown in December 2011.¹ Three years later, Flint voters rejected a proposal that would have eliminated the office.² This memo provides background information and best practices around the Office of the Ombudsman.

The United States Ombudsman Association³ has put forth four criteria necessary for an effective Ombudsman. These criteria include independence, impartiality and fairness, a credible review process and confidentiality.

Independence

This implies that the Office of the Ombudsman should be an independent body, not beholden to any office or government department. By writing this office into the charter and ensuring permanence, the Ombudsman will be able to investigate citizen complaints without fear of political repercussions.

Ways to achieve independence:

- Write the office into the charter to achieve permanence and stability.
- Require appointment by supermajority of City Council.
- Have fixed terms longer than those of City Council members.
- Allow for reappointment.⁴
- Specify causes of removal and require supermajority of City Council to remove.
- The Ombudsman should have the sole power to appoint and remove staff from his/her office.
- Ombudsman should be immune from liability and criminal prosecution.

Sample charter language:

¹ <https://www.cityofflint.com/wp-content/uploads/CityPDF/005.pdf>

² http://www.mlive.com/news/flint/index.ssf/2014/12/flint_emergency_manager_says_n_1.html

³ The US Ombudsman Association is an organization advancing the development of public sector ombudsmen.

⁴ The cities of Detroit and Flint do not allow for reappointment of the Ombudsman.

Detroit:

Sec. 7.5-401. - Ombudsperson.

The Ombudsperson shall be appointed by a two-thirds (2/3) majority of City Council members serving.

Sec. 7.5-402. - Term of Office.

The Ombudsperson's term is ten (10) years. The Ombudsperson may be removed for cause by a two thirds (2/3) majority of City Council members serving.

Sec. 7.5-415. - Immunity.

The Ombudsperson and the staff shall be, to the full extent permitted by law, immune from any suit based on any report or communication within the scope of official duties.

Anchorage:

Section 4.07. - Ombudsman.

There is established in the legislative branch of the municipality the office of ombudsman. The ombudsman is appointed by the assembly and serves at the pleasure of the assembly. The term of office, powers and duties of the ombudsman shall be prescribed by ordinance. The jurisdiction, power and duties of the ombudsman include acts and omissions of employees and agents of the school district, as well as employees and agents of the municipality.

Impartiality and Fairness:

The Ombudsman should be impartial and fair and investigate all complaints objectively.

Ways to achieve:

- Appointment by supermajority of City Council.
- Prevent Ombudsman from participating in political party activities.
- Have a broad jurisdiction so that it does not appeal the Ombudsman is working on behalf of a specific department or official.
- Have a written policy for dealing with conflict of interest.
- Before criticizing a department or agency, the Ombudsman must allow that department or agency to respond.

Sample charter language:

Detroit:

Sec. 7.5-416. - Limitations.

The Ombudsperson may not hold any office of trust or profit other than the office of Ombudsperson, or engage in any occupation for profit outside the duties of this office. The Ombudsperson is not eligible to hold any city office until two (2) years after leaving the position

Sec. 7.5-411. - Consultation Required.

No report or recommendation that criticizes an official act shall be announced until every agency or person affected is allowed a reasonable opportunity to be heard with the aid of counsel. After the hearing, if the Ombudsperson believes it necessary to make a formal report, a copy of any statement made by an agency or person affected shall accompany the report.

Sec. 7.5-407. - Jurisdiction.

The Ombudsperson may investigate any official act of any agency except elective officers which aggrieves any person. The authority of the Ombudsperson extends equally to all agencies. However, with respect to any investigation authorized by this Charter to be made by an agency having subpoena power, the Ombudsperson may only investigate and report whether the agency's investigation and hearing, if any, was conducted fully and fairly.

The Ombudsperson may establish procedures for receiving and processing complaints, conducting investigations and hearings, and reporting findings. No fee shall be levied for the filing or investigation of complaints.

Sec. 7.5-408. Powers of Investigation.

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Where there exists a conflict of interest between the Ombudsperson and another branch of government, the Ombudsperson has the authority to retain an attorney licensed to practice law in Michigan who shall represent the Ombudsperson in legal proceedings. Such attorney shall not represent the city as a municipal corporation in any legal proceeding

A Credible Review Process

The Office of the Ombudsman should be accessible to every resident and able to investigate all types of complaints and departments. A credible review process is necessary to ensure that the recommendations and reports of the Ombudsman are respected.

Ways to achieve:

- Power to investigate all types of complaints including in situations when there is no formal complaint.
- Agency and department staff must cooperate with investigations. Ombudsman should have subpoena power.

- Can publicize findings.
- Findings are not reviewable.
- May not make binding orders.

Sample charter language

Detroit:

Sec. 7.5-408. - Powers of Investigation.

The Ombudsperson may request and shall be given necessary assistance and information by each agency. The Ombudsperson may subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, enter and inspect premises within the control of any agency during regular business hours, and establish rules of procedure. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the Ombudsperson shall apply to the appropriate court.

Confidentiality:

The Ombudsman can use the tool of confidentiality to help during the review process.

Ways to achieve:

- Ombudsman can offer confidentiality.
- Ombudsman cannot be forced to testify or produce records.

Sample charter language

Detroit:

Sec. 7.5-415. - Immunity. [included in section on Independence]

Review of Flint's Current charter language

Flint's current charter language meets most of the criteria for independence, impartiality and fairness, a credible review process and confidentiality. One area of divergence from the US Ombudsman Association's best practices was the issue of reappointment. Flint's current charter language does not allow for reappointment of the Ombudsman, but the USOA recommends allowing reappointment so that effective Ombudsmen can be retained for a second term.

Other Considerations:

- **Executive versus Legislative Ombudsman**
 - Executive Ombudsman is created by the mayor and serves at the pleasure of the mayor. The office may be housed in the mayor’s office.
 - An Executive Ombudsman runs the risk of losing its independence, or being perceived as lacking independence, which is just as important. An Executive Ombudsman also lacks permanency and could be eliminated by any administration.
 - Legislative Ombudsman is written into the charter thereby ensuring permanence. A Legislative Ombudsman reports to City Council.
- **Specificity in the Charter**
 - The City of Anchorage wrote the Office of the Ombudsman into their city charter, but left all remaining details to ordinance (see sample charter language in Independence section). This ensures that the office remains in existence but allows for flexibility through ordinance.
- **Broad or Narrow Jurisdiction**
 - Ombudsman can have a broad jurisdiction (all citizen complaints against the city administration) or a single-sector ombudsman (ex. investigate complaints against law enforcement only). The city of Boise, ID has a single-sector ombudsman with a jurisdiction only over law enforcement.

Other City Examples

Portland: The City of Portland has had an Ombudsman since 1993 when it was created as an Executive Ombudsman to test the idea. In 2001 the office was moved into the Office of the City Auditor to achieve more independence. The Portland Ombudsman has broad jurisdiction and a proactive mandate in which it can investigate anything that might improve the workings of departments or agencies. The Portland Ombudsman does not have subpoena power. Historically, the major issues investigated by the Ombudsman have been housing and transportation.⁵

Resources

United States Ombudsman Association. “Governmental Ombudsman Standards.” 2003. <http://www.usombudsman.org/site-usoa/wp-content/uploads/USOA-STANDARDS1.pdf>

Directory of United States Ombudsman Offices. <http://ombudsdirectory.com/3.html>

Reif, Linda C. “The Ombudsman, Good Governance and the International Human Rights System.” 2013.

⁵ Reif, Linda C. “The Ombudsman, Good Governance and the International Human Rights System.” Pg. 32.