

From: Mark R. Reich <MReich@k-plaw.com>
Sent: Thursday, October 7, 2021 2:19 PM
To: Donna Musumeci
Cc: Donna Holaday; Jared Eigerman
Subject: [Ext]RE: [Ext]RE: Cultural council requirements

external e-mail use caution opening
Donna –

Thank you for this information.

The provision you cite with respect to residency requirements is found in the City's Code of Ordinances in Article III, Boards, Committees, Commissions, and states as follows:

Sec. 2-62. - Residency requirement.

Unless otherwise allowed by law, regulation, ordinance, or by this charter, all members of multiple member bodies must be residents of the city at all times during their entire term of office. If a member of a multiple member body moves from the city during the term for which appointed, such seat shall immediately be deemed vacant and filled in the manner provided for in section 3-3 of the Charter.

This language may be deemed permissive as opposed to restrictive, in that non-resident appointments are permitted if allowed by law. Please note with respect to appointments generally, the provisions of G.L. c. 41, sec. 109 state in pertinent part as follows:

Unless otherwise provided by general or special law, ordinance or by-law, a person need not, in order to accept appointment to a public office in a town or district, be a resident of such town or district; provided, however, that if an appointed town or district officer is required to become a resident within a period of time specified at the time of his appointment by the board or officer making the appointment but fails to do so within the time specified, or if an elected or appointed town or district officer removes from the town or district in which he holds his office, he shall be deemed to have vacated his office.

In my opinion notwithstanding the reference to towns, this provisions will also apply to cities (See G.L. c. 4, sec. 7, clause 34).

The provisions of G.L. c. 10, sec. 58, which allows for establishment of a local cultural council, does not require that members of such a council be residents of the city or town. The statute simply states with respect to membership, "Members of the local and regional cultural council shall be appointed for staggered terms of three years and any such member shall not be appointed to more than two consecutive terms. Members shall have demonstrated scholarship or creativity in, or distinguished service to, the arts, humanities, or interpretive sciences." Therefore, in my opinion, pursuant to the provisions of G.L. c. 41, sec. 109, a non-resident may be allowed by law to serve on a local cultural council.

In my opinion, however, the intent of the local ordinance regarding residency for appointees must be determined by the legislative body, being the City Council, as to whether the application of the provisions of G.L. c. 41, sec. 109 satisfies the permissive language of Ordinance Section 2.62. If it was the legislative intent to allow non-resident appointees only if a statute specifically allowed for such, then the provisions of G.L. c. 41, sec. 109 allowing for such appointments unless otherwise provided by law would not be sufficient in this case, as there is no specific authorization for non-resident appointees. If the intent

was instead to allow non-resident appointees in the manner provided by the provisions of G.L. c. 41, sec. 109, such non-resident appointees to the Cultural Council would be permissible. In this case, where non-resident members of the cultural council were appointed, there may be some suggestion that the latter interpretation applies. However, it is uncertain whether members of the City Council were aware of this issue when they voted to approve those appointees. Either outcome may be acceptable based upon the interplay of the ordinance and the statute. Where there is a matter of ambiguity, it would be important to determine the intent of the City Council, with respect to the meaning of the ordinance.

It would be useful to review any documentation related to the establishment of the City's Cultural Council to determine whether there is any additional guidance in this regard. I have only been informed that the Cultural Council was established pursuant to G.L. c. 10, sec. 58, with no authorizing order of the City Council provided for review, and I have been unable to find any additional information. Thus, in my opinion, given the ambiguity in the ordinance and the uncertainty of the applicability of G.L. c. 41, sec. 109 in regards to residency of appointees, the City Council should determine the intent of the ordinance or consider enacting an order or ordinance governing appointments to the Cultural Council so as to clarify the residency issue.

I recognize that the above comments do not provide a definitive opinion on this matter. Unfortunately, there is no clear legal determination in this matter absent a court decision. Please note that a court would, given the statutory and ordinance ambiguity, also look to the legislative intent of the ordinance and its application. For that reason, I suggest that this issue be referred back to the City Council for further consideration, taking into account the issues raised above.

Please contact me with any further questions

Thank you.

Mark

Mark R. Reich, Esq.

KP | LAW

[101 Arch Street, 12th Floor](#)

[Boston, MA 02110](#)

[O: \(617\) 556 0007](tel:(617)5560007)

[F: \(617\) 654 1735](tel:(617)6541735)

mreich@k-plaw.com

www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.