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To Members of the City Council, City Clerk, City Treasurer, and the residents of the City of Chicago:

The City has for a number of years issued residency waivers to active City employees for limited periods of time. A recent investigation of an employee's alleged violation of the City's residency requirement prompted the IGO to scrutinize the waiver process and the applicable ordinance and administrative rules. Based on that review, the IGO has concluded that the City's waiver process under City Personnel Rule IV, Section 5, which provides that the Department of Human Resources (DHR) Commissioner may waive the City's residency requirement for particular applicants or jobs, conflicts with and has been applied in violation of the City's residency ordinance, Municipal Code of Chicago Section 2-152-050.

The City's residency ordinance provides—with no exceptions—that all officers and employees of the City must reside within the City or else shall be discharged from City employment. DHR has historically relied upon Personnel Rule IV, Section 5, to grant temporary residency waivers for new employees of a critical or specialized nature to provide time to relocate to Chicago. But however reasonable residency waivers might be deemed as a matter of policy, Personnel Rule IV, Section 5, operates as an exception to the City residency ordinance that permits no exceptions. Accordingly, discretionary waivers of the residency requirement are not allowed as a matter of City law and must remain so absent an ordinance change. The IGO takes no position on the merits of such a change to the residency ordinance. We note merely that in its current form, the residency ordinance does not permit any form of waiver of the residency requirement and that the current waiver practice therefore must cease.

In response to the IGO's review and recommendations in its Summary Report detailing a specific violation of the residency law, the DHR Commissioner has informed the IGO that DHR will no longer grant residency waivers. The Commissioner further responded that "[i]f the residency ordinance is amended such that waivers are permitted, DHR will make any necessary changes to the Personnel Rules and any other relevant policies and procedures and ensure that all DHR employees and departmental HR Liaisons are properly trained."

As always, I welcome ideas your ideas comments, suggestions, questions, and criticisms.

Respectfully,

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Inspector General
City of Chicago



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REPORT OF THE INSPECTOR GENERAL'S OFFICE:

IGO REVIEW OF PERSONNEL RULE RESIDENCY WAIVERS

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I. INTRODUCTION

A recent Inspector General's Office (IGO) investigation of an employee's alleged violation of the City's residency requirement necessitated a review and analysis of the City's practice of granting "residency waivers" that allow City employees to live outside of the City for limited periods of time. Based on that review, the IGO has concluded that the current language of the City's Personnel Rule IV, Section 5, which provides that the Department of Human Resources (DHR) Commissioner may waive the City's residency requirement for particular applicants or jobs, conflicts with and generally has been applied in violation of the City's residency ordinance, Municipal Code of Chicago Section 2-152-050. The City's residency ordinance provides—with no exceptions—that all officers and employees of the City must reside within the City or else be discharged from City employment. The residency ordinance, which carries the force and effect of law, supersedes the administrative personnel rules promulgated by the DHR Commissioner and thus appears to prohibit any "waiver" of the residency requirement.¹

DHR has historically relied upon Personnel Rule IV, Section 5, to grant temporary residency waivers for employees of a critical or specialized nature. These waivers have most commonly been used to provide new employees a limited period of time to relocate to Chicago. DHR is generally entitled to deference in the construction of its own rules, provided that its construction comports with the language of the rules and the applicable City ordinances.² But however reasonable residency waivers may be as a matter of policy, DHR's interpretation and construction of Personnel Rule IV, Section 5, appears to operate as an exception to the City's residency ordinance, a law that permits no exceptions. Accordingly, discretionary administrative waivers of the residency requirement are presently not allowed as a matter of City law and will remain so absent an ordinance change. The IGO takes no position on the merits of such a change to the residency ordinance. We note merely that in its current form—and contrary to the language of the City's current Personnel Rules—the residency ordinance does not permit any form of administrative waiver of the residency requirement.

¹ Illinois courts have repeatedly recognized that ordinances are interpreted no differently than statutes. *See, e.g., Landis v. Marc Realty, L.L.C.*, 235 Ill.2d 1, 7, 919 N.E.2d 300, 303 (2009); *Getto v. City of Chicago*, 392 Ill. App. 3d 232, 238, 913 N.E.2d 528, 532-33 (1st Dist. 2009). An administrative agency possesses only that authority conferred by statute. *Illinois RSA No. 3, Inc. v. Dep't of Cent. Mgmt. Servs.*, 348 Ill. App. 3d 72, 76-77, 809 N.E.2d 137, 14 (1st Dist. 2004). Accordingly, an administrative agency's rules interpreting a statute may neither limit nor extend the scope of that statute. *Am. Stores Co. v. Illinois Dep't of Revenue*, 296 Ill. App. 3d 295, 300, 694 N.E.2d 644, 647 (1st Dist. 1998).

² *See Ress v. Office of State Comptroller*, 329 Ill. App. 3d 136, 142, 768 N.E.2d 255, 260 (1st Dist. 2002); *Am. Stores Co.*, 296 Ill. App. 3d at 300, 694 N.E.2d at 647.

II. BACKGROUND

A. **Applicable Law**

The Municipal Code of Chicago Section 2-152-050, “Residence Restrictions,” provides that all City employees must reside in the City and makes no mention of a waiver from the residency requirement:

All officers and employees of the city shall be actual residents of the city. Any officer or employee of the city who shall fail to comply with the provisions of this section shall be discharged from the service of the city in the manner provided by law.

The City of Chicago Personnel Rules are issued by the DHR Commissioner, subject only to public notice and comment. M.C.C. § 2-74-050. Personnel Rule IV, titled “Recruitment and Applications,” Section 5, current as of November 18, 2010, states that the DHR Commissioner may waive the residency requirement for a particular applicant or a particular job, but also reiterates the Municipal Code’s residency requirement for all employees:

All applicants for positions in the City of Chicago shall be actual residents of the City of Chicago at the time of employment. *The Commissioner of Human Resources may waive this residency requirement for a particular applicant upon written request, or for a particular job based upon his or her determination that such waiver is for good cause and serves the interest of the City. An individual waiver is not necessary where the residency requirement is waived for the job in question. The Commissioner of Human Resources shall make a decision on any individual request, which shall be final. This waiver at the time of application does not affect the requirement to be an actual resident of the City of Chicago at the time of appointment and during employment as set forth in Section 2-152-340³ of the Municipal Code of Chicago. (Emphasis added).*

This particular version of Personnel Rule IV, Section 5, has been in force since December 10, 2009, when the DHR Commissioner issued various amendments to the Personnel Rules. The previous version of Rule IV, Section 5, provided that all applicants must be actual City residents at the time of *application*, not just at the time of employment as required by City ordinance. Additionally, the previous version stated that the DHR Commissioner could waive this requirement for an applicant or a particular job examination, rather than a particular job. Just as in the current rule, however, the previous version reiterated the residency requirement for all employees:

All applicants for positions in the Career Service shall be actual residents of the City of Chicago at the time of *application*. The Commissioner of Human Resources may waive this residency requirement for a particular applicant upon written request, or for a particular *examination*, based upon his or her

³ Effective April 13, 2011, M.C.C. § 2-152-340 was renumbered as § 2-152-050.

determination that such waiver is for good cause and serves the interest of the City. An individual waiver is not necessary where the residency requirement is waived for the *examination* in question. The Commissioner of Human Resources shall make a decision on any individual request, which shall be final. This waiver at the time of application does not affect the requirement to be an actual resident of the City of Chicago at the time of appointment and during employment as set forth in Section 2-152-340 of the Municipal Code of Chicago. (Revisions underlined).

B. IGO Notice of Residency Waivers

Because the IGO is tasked with investigating alleged violations of the City's residency requirement, DHR has traditionally provided the IGO with notice of residency waivers issued by the DHR Commissioner or the Mayor's Chief of Staff. The notices are usually in the form of a memorandum from the DHR Commissioner or Mayor's Chief of Staff to the head of the employee's department and copied to the IGO, detailing the purpose and duration of the particular waiver. The IGO has received notice of temporary residency waivers issued for approximately ten City employees over the past three years. In most instances, the temporary waivers were issued for new hires, providing two to three months for the employee to relocate to Chicago.

C. DHR Administration of Residency Waivers

In the fall of 2010, the IGO interviewed a senior manager in DHR who explained his understanding of the department's practices for the issuance of waivers based on his active participation in that process. The senior manager believed that DHR has awarded residency waivers for some time. The manager estimated that DHR grants approximately ten residency waivers each year, representing just a small percentage of the 1,000 to 1,300 individuals hired each year by the City. Waivers, the manager explained, are typically granted for employees of a critical or specialized nature, such as a physician who specializes in a branch of medicine that is in high demand or an attorney who specializes in a specific area of law. An IGO review of DHR waivers revealed that over the last two years, the most common recipients of residency waivers were incoming commissioners, department heads, or senior management personnel.

The DHR manager additionally explained the DHR procedures for granting residency waivers. Waivers for City employees below the level of commissioner are approved by the DHR Commissioner. The process is initiated by a request from a department head to the DHR Commissioner. The manager provided the IGO with a sample request in the form of a memo. The sample memo to DHR states, "[i]n accordance with the provisions of Personnel Rule IV – Recruitment and Applications, Section 5 – Residence, the Department of _____ requests (30, 60, 90) day(s) residency waiver . . . that will afford the applicant an opportunity to secure housing in Chicago." The manager noted that it is customary for a department head to call the DHR Commissioner to give a "heads up" about the request and to explain in further detail the nature of the request. After the request is received by DHR, the manager reported, a decision is made fairly quickly and communicated to the requesting department. When the request for a residency waiver is for a commissioner or department head, the process is different. Rather than

the DHR Commissioner, the manager explained, the Department of Law and the Mayor's Chief of Staff review a department head's request and determine whether to approve it. The decision is then communicated to DHR.

III. ANALYSIS AND RECOMMENDATIONS

DHR has for a number of years issued administrative residency waivers to active City employees. A recent IGO investigation, however, prompted the IGO to more closely review the waiver process and the applicable ordinance and administrative rules, and we conclude that the City's residency ordinance establishes a clear requirement that all officers and employees reside in the City. The ordinance allows no exceptions nor does it delegate to the DHR Commissioner the discretion to issue residency waivers as DHR has done under Personnel Rule IV, Section 5. That rule, however, appears to be internally inconsistent, and, to the extent that it purports to give the DHR Commissioner authority to issue residency waivers for particular employees or jobs, conflicts with the residency ordinance.

First, with full deference for the construction of the rule provided by DHR, the IGO notes that the meaning of Personnel Rule IV, Section 5, is not clear on its face. The rule states that the DHR Commissioner has the discretion to waive the residency requirement for (1) a particular *applicant* upon a written request, or (2) a particular *job* based on a determination that the *job* waiver is for good cause and serves the interest of the City. But the final sentence of the rule appears to negate these earlier sentences. The final sentence states, "This waiver *at the time of application* does not affect the requirement to be an actual resident of the City at the time of *appointment* and *during employment* as set forth in Section 2-142-340 of the Municipal Code of Chicago." (Emphasis added). Full and literal meaning and effect of the final sentence is achieved only by reading it to limit the preceding individual waiver language to *applicants* in the context of the application process itself. In other words, the lack of *current* residency by an applicant shall not act as a bar to eligibility for a City job, *provided that residency is established by the time of appointment and during employment*, as required by Section 2-152-340 of the Municipal Code. More importantly, such a reading is the *only* construction that brings the residency waiver language of Personnel Rule IV into conformity with the residency ordinance (expressly referenced in the rule), which bars employment of non-residents.

The IGO notes that the previous version of the personnel rule permitting residency waivers *at the time of application* may have been susceptible to a reading consistent with the residency ordinance. The previous personnel rule added the requirement that all applicants for City positions must be City residents at the time an application was submitted and not just at the time of employment. Read as a whole, the prior rule appears to have permitted the DHR Commissioner to waive the residency requirement only at the time of application and explicitly acknowledged that the rule did not affect the residency requirement for employees at the time of employment, as provided by ordinance. Regardless, DHR's interpretation of this rule has apparently evolved to authorize the DHR Commissioner to issue waivers for *current* City employees, an interpretation which directly conflicts with and violates the residency ordinance's absolute bar to employment of non-residents.

In sum, DHR uses its “residency waiver” rule to provide an exception to a law that provides no exceptions—meaning the rule is *ultra vires*. And given that the personnel rule purports to allow waivers largely at the discretion of the DHR Commissioner, the IGO notes that the rule is susceptible to being applied unevenly and prejudicially. However reasonable a temporary residency waiver rule may be as a matter of policy, the construction of Personnel Rule IV, Section 5, as administered by DHR, has not comported with the express terms of the rule itself and, most importantly, the residency ordinance. Discretionary administrative waivers of the residency requirement presently are not allowed as a matter of City law and will remain so absent an ordinance change. The IGO takes no position on the prudence or merits of such a change to the residency ordinance, which has been the subject of recent public debate. We note merely that in its current form, the ordinance does not permit any form of administrative waiver of the residency requirement.

IV. PROGRAM RECOMMENDATION

The IGO recommends that if the City Council and the Mayor believe that residency waivers should be allowed as a matter of policy, they should amend the residency ordinance. As the IGO believes the City’s current waiver policy and procedures violate the mandatory residency requirement for holding City employment, the IGO recommends that DHR (and the Office of the Mayor) cease granting waivers for City employees unless and until the residency ordinance is amended. Should the City amend the residency ordinance, the IGO recommends that DHR clarify the relevant personnel rules and procedures to correspond with the ordinance, as amended, and ensure that all DHR employees and human resources liaisons are properly trained on the residency requirement and any applicable waiver procedures.