



MEMORANDUM

Date: Monday, October 20, 2025
To: Chris Kukulski, City Administrator
From: Gina Dahl, City Attorney
Re: Council Initiative to adopt a residency requirement for certain employees

QUESTION PRESENTED

Is Council prohibited from adopting an ordinance establishing a residency requirement for certain employees considering Charter Sec. 3.07 (prohibiting Council from dictating, in any manner, the appointment or removal of any employees) and Sec. 4.03 (empowering the City Administrator with all executive functions including appointment of all employees)?

BRIEF ANSWER

Arguably, no, Council is not prohibited from establishing such a policy. It is not fully clear because the Charter does not directly address the issue and unfortunately, there is no definitive answer provided in state law.

DISCUSSION

MCA 7-4-4101 provides the officers of a city include: one mayor, two council members from each ward, and one city judge. Subsection (2) provides that additional officers may be appointed by the mayor, with advice and consent of counsel, including one city attorney, one city clerk, one city treasurer or finance officer, one chief of police, one assessor, one street commissioner, etc. However, this subsection (2) has been superseded by the City Charter in Section 4.03 which delegates the authority to “appoint, suspend, and remove all employees of the local government” to the City Administrator. The question is whether this authority includes establishing the policies and procedures for making such appointments.

MCA 7-4-4104 provides no person is eligible to hold any municipal office, elective or appointive unless they meet the qualifications prescribed by law or “*by ordinance adopted by the governing body of a city or town.*” Therefore, if Council decides to adopt a residency requirement for certain employees, it must do so by ordinance.

A local government generally has the authority to exercise any power, including adopting an ordinance establishing a hiring qualification policy, not prohibited by the constitution, law, or charter.¹



In determining whether a self-government power is authorized, a three-part analysis is applied²:

- 1) consult the charter and consider constitutional ramifications;
- 2) determine whether the exercise is prohibited under the various provisions of Mont. Code Ann. Tit. 7, Ch. 1, Part. 1 or other statute specifically applicable to self-government units; and
- 3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control as defined by section 7-1-113.

The second and third steps will be addressed first as they are easily resolved, and the first step will later be addressed in more detail.

The second step of the analysis requires consideration of sections 7-1-111 and 7-1-112, MCA, which limit the exercise of power by local governments with self-government powers, and section 7-1-114, MCA, which enumerates those provisions of state law with which a local government with self-government powers must comply. Enactment of the proposed ordinance is not prohibited by any of the provisions of section 7-1-111 or 7-1-112, MCA. Nor would such an enactment conflict with any of the provisions of section 7-1-114, MCA.

The third step of the analysis, which is controlled by section 7-1-113, MCA, also does not prohibit enactment of an ordinance establishing a residency requirement as such a policy would not be inconsistent with state law or regulation.

Regarding the first step of this analysis, in adopting the Billings Charter, the City has reserved all powers available to a self-government city under the Constitution and the laws of Montana. As to constitutional ramifications, as long as the ordinance requiring residency bears a rational relationship to a legitimate governmental interest, it would be constitutional. It is assumed such a legitimate governmental interest exists and this should not bar adoption of such an ordinance. All reserved powers are vested in the Council, which, together with the Mayor, constitutes the legislative branch. The Charter also confers all executive functions to the City Administrator. Sec. 4.03.F. delegates the authority to “appoint, suspend, and remove all employees of the local government” to the City Administrator. Additionally, Sec. 3.07 of the Charter provides that “[n]either the City Council, its members, nor the Mayor shall *in any manner* dictate the appointment or removal of any city administrative officers or employees whom the City Administrator or any of his or her subordinates are empowered to appoint.” (Emphasis added.)

These sections do not explicitly deny City Council the authority to enact a residency requirement by ordinance, but these sections insert doubt into whether it was the intent of



the Charter for Council to adopt policies related to the appointment of employees since the power to administer all offices of the city and appoint all employees was delegated to the City Administrator. Taken together, Sections 3.07 and 4.03 are clear that Council cannot interfere with the appointment or removal of specific individuals, but it is less clear whether the setting of qualifications for appointments of certain positions was intended under the Charter. The phrase “in any manner” of Sec. 3.07 adds a considerable degree of ambiguity to this analysis.

Arguably, Council can establish **any** policy, and it is the duty of the City Administrator to carry out those policies. Sec. 4.03.A. However, it may also be a reasonable interpretation that the City Administrator should set the policies and procedures to appoint all employees under Sec. 4.03.F. of the Charter. The City Administrator has been empowered to set numerous policies and procedures to administer the affairs of the City, including policies that apply to hiring and firing of employees. See, for example, the City’s Human Resources Policy Manual (<https://www.billingsmt.gov/DocumentCenter/View/53701/COMPLETE-COB-EMPLOYEE-HANDBOOK-EFF-512025>).

CONCLUSION

Based on the above, there is some apparent conflict between the Charter provisions, and the proposed policy Council is contemplating. However, if Council wishes to adopt an ordinance imposing a residency requirement on certain employees of the City, although it is always difficult to predict a Court’s interpretation, it would likely be determined to be valid so long as it didn’t result in the termination of existing employees. See MCA Title 39, Chapter 2 and §§39-2-901 through 39-2-915 (“Wrongful Discharge From Employment Act”).

¹ Mont. Const. Art. XI, § 6. See also *Billings Firefighters Loc. 521 v. City of Billings*, 214 Mont. 481, 484, 694 P.2d 1335, 1336 (1985) citing *State ex rel. Swart v. Molitor* (Mont.1981), 621 P.2d 1100, 1102, 38 St.Rep. 71, 72–73.

² See 44 Op. Att’y Gen. No. 34 (1992); 43 Op. Att’y Gen. No. 41 at 130, 132 (1989), citing 37 Op. Att’y Gen. No. 68 at 272, 274 (1977); 46 Mont. Op. Att’y Gen. No. 13 (Feb. 28, 1996).