



BOSTON RESIDENCY COMPLIANCE COMMISSION

Office of Human Resources
Boston City Hall, Room 612
Boston, MA 02201

Thomas M. Menino, *Mayor*
John McGonagle, *Chairman*

617-635-3374
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TO: Office of the City Clerk

DATE:

10/1/09

Pursuant to City of Boston Ordinance 5-15 please find attached the FY 09 Annual Report of The Residency Compliance Commission.

If you have any questions concerning this report please contact Commission Staff member Stephen Crosby at 617-635-4484.

“Dedicated To Serve, Guide, and Support”



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ANNUAL REPORT (2008-2009)

Chairman

John McGonagle

Commissioners

Eileen Boyle

Kempton Flemming

William Linehan

William Kessler

Shirley Lee

Vacant (1 of 2 "Save Our City" Seats)

September 2009

"Dedicated To Serve, Guide, and Support"

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OVERVIEW

The Residency Compliance Commission has been established pursuant to City of Boston Ordinances. 5-10.1, as amended on July 21, 1994,

5-10.1 Residency Compliance Commission

There Shall be a Residency Compliance Commission (“Commission”) comprising seven (7) Commissioners, five to be appointed by the Mayor of Boston so long as one is a city union representative and two are members of the citizens group Save Our City; the city’s affirmative action officer shall serve ex officio, and the City Council President, or such other Councilor designated from time to time by the Council President, shall serve ex officio. The purpose of the Commission shall be to investigate and make findings, pursuant to the following provisions, relative to compliance with the Boston Residency Ordinance, CBC. Ord. 5-5.2, 5-5.3 (“Residency”).

All Commissioners, with the exception of the City Council President, shall serve coterminous with the Mayor and any vacancies shall be filled by the Mayor of Boston for the unexpired term. The Commissioners shall elect annually a Commissioner Chairperson. Commissioners shall serve without compensation and shall be classified as Special Municipal Employees for the purpose of the State Ethics Law, G.L.c 268A.

The Commission shall have the power to investigate, conduct hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath and in connection therewith to require the production for examination of any documents, books, papers, or evidence relating to any matter in question or under investigation by the Commission. The Commission may appoint from within or without its membership a hearing officer to conduct particular hearings. Subpoena power shall be exercised by the chairperson of the Commission, or his or her designee, upon majority vote of the Commission. The employee who is the subject of a hearing shall be afforded notice and an opportunity to provide testimony, witnesses, documents, and to have counsel present.

Should the Commission, after hearing, find that an employee, who is subject to the Residency Ordinance, does not reside within the city of Boston, the Commission shall issue its findings to the employee’s department head. The Commission shall also, with its findings, advise that the employee’s failure to reside within the city of Boston constitutes a voluntary termination of employment under the Residency Ordinance and said department head or appointing authority shall, consistent with the Residency Ordinance, notify the treasurer to remove the employee’s name from the payroll.

Semi-annually, the Commission shall provide a written report to the Mayor, who shall file a copy with the City Council. This report shall include all investigations and findings by the Commission with respect to the Residency Ordinance, (Ord. 1994c. 10)

5-10.2 Residency Compliance Unit

There shall be a Residency Compliance Unit ("Compliance Unit") within the Administrative Services Department, Personnel Division, which shall also have the power to conduct investigations of city employees and officers where there is reason to believe that an employee or officer may be in violation of the Residency Ordinance. The Municipal Police Department shall serve as investigators for both the Compliance Unit and Compliance Commission.

The Compliance Unit shall ensure, pursuant to the Residency Ordinance, the filing of residency affidavits and submission of additional documentation to verify residency. It shall also serve as a vehicle whereby employees and the general public may report those who are believed to be in violation of the Residency Ordinance. Where questionable claims of residency exist, the Compliance Unit shall forward such to the Compliance Commission for further investigation as delineated in Section 5-10.1. (Ord. 1994c. 10)

MEETINGS

The Residency Compliance Commission meets regularly, with meetings scheduled for the first Thursday of each month. The City Clerk is notified of said meetings in advance, and consistent with Public Meeting Laws, the meetings are open to the public. Over the past year the Commission conducted meetings on the following dates:

July 3, 2008 (No Quorum)

August 7, 2008

September 4, 2008

October 2, 2008

November 6, 2008

December 4, 2008

January 8, 2009

February 5, 2009

March 5, 2009

April 2, 2009

May 7, 2009

June 4, 2009 (No Quorum)

CASES REFERRED TO INVESTIGATION

Consistent with the City Ordinance, the Commission reviews potential cases for violations. If warranted, the Commission accepts a case for investigation, and then assigns it to the Compliance Unit. The Compliance Unit assigns the case to its staff investigator or on occasion, a private firm contracted to conduct investigations for the Commission. To date, the Commission has referred One Hundred Forty One (141) cases for investigation.

INVESTIGATION RESULTS

The Compliance Unit has investigated in depth Ninety Nine (99) of the One Hundred Forty One (141) cases referred to it. The results of the 92 cases as of June 30, 2008 are as follows:

In Compliance	37
Not in Compliance	59
Continued	3

Additionally, Seventy Six (76) employees have self identified (Self-I.D.'s) as living outside of the city. These 76 have voluntarily resigned from city government.

HEARINGS

Pursuant to the Ordinance, the Commission may conduct a hearing relative to a particular investigation. To date, the Commission has conducted Thirty Nine (39) hearings resulting in Thirty Two (32) findings of non-compliance and Three (3) findings of compliance. Additionally, 3 cases are currently categorized as continued, and maybe subject to further investigation.

ARBITRATION

Employees who are found to be **not in compliance**, but are covered by a collective bargaining agreement, may be entitled to grieve through their union representation. Most collective bargaining agreements seek to resolve such grievances through arbitration. To date, Seven (7) cases have been submitted and heard through the arbitration process.

In case #1, #4, #5, #6 and #7 the arbitrator concluded that the employee was in violation of the City ordinance, and upheld the Commissions findings.

In cases #2 and #3, the arbitrator concluded that the employee was not in violation of the ordinance, and overruled the Commission's findings. However, the City's Corporation Counsel and the Commission both believe that the Arbitrator exceeded his/her authority in defining the place of residency.

One employee elected to appeal his case to the Civil Service Commission instead of arbitration. The case was dismissed by the Civil Service Commission.

PROCEDURES

At its regularly scheduled meeting on May 4, 1999, the Residency Compliance Commission adopted detail rules of Practice and Procedures, a copy of which is available either through the Compliance Unit office or the Office of the City Clerk. On April 7, 2004 the Commission amended section (K) "Decisions" so only members actually present at a hearing (but not less than 3) must decide if an employee is not in compliance with the ordinance.

At its regularly scheduled meeting on April 01, 1997, The Residency Compliance Commission formally adopted the following procedures for hearings:

RESIDENCY HEARING PROCEDURES

In accordance with provisions of the Boston Residency Ordinance, the following procedures will take effect for all future hearings.

1. Employees alleged to be in violation of the Ordinance would be given a hearing to refute the charge of non-compliance with the law. The hearing will be held before the Boston Residency Compliance Commission and it will be the only hearing that the employee will receive.
2. Upon a vote of the Commission, notice of the hearing will be served to the employee by their respective department head or his/her designee. Department heads, upon notice to said employee, may place the employee on administrative leave with pay pending the outcome of the Commission hearing.
3. The Commission will schedule a hearing no sooner than ten (10) working days. In the event of the need for a postponement, and on a case-by-case basis, all hearings shall be scheduled within thirty (30) calendar days from the issuance of said notice. Should the employee not appear at their scheduled hearing--- said hearing will be conducted in their absence, and a written opinion will be rendered to the employee's department head.
4. This hearing will be conducted as a full evidentiary hearing with the right to question all aspects of the alleged violation of the ordinance.
5. Reasonable discovery requests made by the employee or his/her representative will be honored in a timely manner.

6. Upon completion of the hearing the Residency Compliance Commission, based on a review of the evidence, will issue their decision, pursuant to S.5-5.3, to the employee's department head.
7. The Commission upon finding that the employee was in violation of the ordinance shall instruct the department head to remove the employee from the payroll. A letter from said department head accompanied by B-56 termination notice will effectuate this.
8. At the close of the hearing, employees will be asked to provide and address that they would like the decision to be mailed to.
9. All hearings will be taped, all parties will be notified prior to each hearing of this procedure, and all witness will be sworn in prior to the start of the hearing.

HEARING GUIDELINES

At its regularly scheduled meeting on October 1, 1996, the Residency Compliance Commission adopted the following hearing guidelines:

GUIDELINES FOR CONDUCTING AN EVIDENTIARY HEARING

- This hearing is being held in accordance with the provisions of chapter 5, section 5-10.1, of the City of Boston Residency Ordinance. This may be the only hearing you will receive by the City of Boston.
- This hearing will be taped.
- The purpose of this hearing is to allow the employee to refute alleged assertions that he/she is in violation of the Collective Bargaining Agreement and the City of Boston Residency Ordinance.
- Anyone who wishes to address the Commission must do so under oath. Otherwise, the Commission will not consider the testimony.
- Representatives of the Compliance Unit will make their presentation first. Afterwards, the employee or his/her representative will have the opportunity to respond and present any and all evidence regarding the employee's residence.
- At the conclusion of this hearing, the Commission will evaluate all of the information and issue its finding to the employees department head.

COMMISSION MEMBERS

Pursuant to the Ordinance a seven member Commission is appointed as follows:

Five members appointed by the Mayor, to include a city union representative and two members of the citizens group Save Our City.

The President of the City Council or a Councilor designated by the President.

The Affirmative Action Officer of the City.

The Commission annually elects a Chairperson

The Commission members and their affiliation are as follows:

Chairman: John McGonagle (reelected, September 4, 2008)

Commissioners: Eileen Boyle (Save Our City)

Kempton Flemming (Union)

William Kessler (Affirmative Action Officer)

Shirley Lee

Vacant (Save Our City)

William Linehan (Boston City Council)

COMMISSION MEETING SCHEDULE (2008-2009)

The following is Residency Compliance Commission meeting schedule for 2007-2008. Unless otherwise noted, all regularly scheduled Commission meetings are held in Room 811 of Boston City Hall at 9:00 AM:

July 2, 2009

August 6, 2009

September 3, 2009

October 1, 2009

November 5, 2009

December 3, 2009

January 7, 2010

February 4, 2010

March 4, 2010

April 1, 2010

May 6, 2010

June 3, 2010