



The Corporation of the
City of Sault Ste. Marie

COUNCIL REPORT

June 23, 2025

TO: Mayor Matthew Shoemaker and Members of City Council
AUTHOR: Karen Fields, City Solicitor
DEPARTMENT: Legal Department
RE: Residency Requirement Policy for New Department Heads

Purpose

The purpose of this report is to respond to a resolution passed at the January 13, 2025 Council meeting. The resolution stated:

Whereas Sault Ste Marie City Council recognizes the importance of fostering strong leadership and community involvement within our municipal government; and

Whereas City Council recognizes that spending decisions made by City department heads can directly impact local property taxes and other financial obligations of residents and businesses in Sault Ste Marie and

Whereas City Council believes that having department heads to live within the city limits will ensure that they share the same concerns as the residents they serve, particularly concerning budget decisions and spending

Now Therefore Be It Resolved that staff be requested to report back to Council regarding a policy on having a residency requirement within the City of Sault Ste. Marie to be negotiated into all future contracts for department heads at the Corporation of the City of Sault Ste. Marie, including provision for enforcement and, where necessary, if exceptions should be made. Current department heads who do not reside within the City limits shall be exempt from this requirement, provided they continue in their current position.

As well as the resolution, there was also some discussion on addressing the issue of not wanting to have senior managers, or department heads, working remotely from other locations or cities.

Background

Residency and Performance

Previous Council discussion on this resolution included statements that having department heads living within the City will ensure that they share the same concerns as the residents they serve on budget decisions and spending. It should be noted that department heads, as a function of their position and job duties are required to act in the best interests of the

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City. Failure to act in the best interests of the City, or to follow the requirements of the job, would clearly be a management performance issue dealt with through the normal course of performance reviews, bi-weekly meetings, counselling, warning, etc.

Each department head has limited ability to spend without oversight. Budget is also not one person's domain. The department budget comes with an overview by Finance, the CAO, and ultimately Council.

If it were determined that a senior staff employee was not making sound, prudent decisions, there is already a mechanism in place for the CAO to review the job requirements with that person, express the requirement expected and ultimately, if compliance was not achieved, to recommend the termination of employment of that person. Internal checks and balances are already in place to ensure staff are fulfilling their obligations as set out in their job descriptions.

Analysis

Is such a Policy legal?

On its face, yes, it is allowable. There is no reason currently that an employer could not institute that policy. There have been constitutional challenges to such policies in the past, and they failed both under section 6 of the Charter (the mobility rights section) and under section 7 of the Charter, the right to life, liberty and security of the person. There is one case from the Supreme Court of Canada that stated in a minority decision that the Court felt that where someone chose to live was a protected right under section 7, the right to liberty. In that case, the Court stated that the State ought not to be permitted to interfere in this private decision-making process absent compelling reasons for doing so. Cases on this topic have not interpreted that portion of section 7 wide enough yet to follow that line of thinking, but that is subject to change over time. The issue of whether a place of residence is a protected liberty interest under section 7 remains unsettled. So *per se*, it is not illegal to have such a policy at this time.

Is it a Discriminatory Policy?

A policy must be considered in two ways: Is it illegal or discriminatory on its face, and if not, can it lead to an illegal or discriminatory outcome not intended by the policy maker.

In this case, it has the potential to be discriminatory. On its face, no protected grounds would be violated if an employer dictated where an employee had to live; however, the policy could very well lead to systemic discrimination. For example, if the best candidate for a job lived in a First Nations community and did not wish to leave their community, the policy would perpetuate a disadvantage to an identifiable group.

As all municipalities are, the municipality is asked to use the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") guidelines when considering policies and decisions. The guidelines ask us to consider the following: that policies promote social and economic participation, not impact Indigenous identity, community, and connectedness, and respect the right not to be assimilated.

The resolution also exempts current department heads who do not reside within the City limits, provided they continue in their current position. This would mean that, if that employee never seeks a higher position or hopes to advance within the organization, their employment is secure, on the residency aspect at least. But if they are the best candidate for a different position, they would have to face the choice of finding a different residence, not accepting a role they are the best candidate for, or facing termination of employment if they accepted the role and did not move. If they were forced to miss that opportunity, they could argue that a fundamental term of their employment contract was breached, as there was never a term when hired that stated that they had to have City residency to grow within the corporation.

Is there a way of achieving the same outcome without a Policy and enforcement?

As recruitment of employees remains an ongoing challenge, does the City want to add more restrictions on employment when other employers have introduced remote and hybrid working conditions and options for positions? Part of the discussion at the time the resolution was tabled was the desire not to have senior staff members working from another City, which would result in 100% remote work. If an employer chooses to maintain that work cannot be done remotely, then it would be understood that the person would be required to live within a radius that allows them to be in the office. If a candidate being interviewed advised that they only wanted to work remotely, they would be removed from the list of possible candidates to be hired. At the time of posting a position, the posting would simply state that the position is not subject to remote work.

It is for the above noted steps that are already in place, that the City does not need a specific policy just on residency.

Financial Implications

There are no immediate financial implications for this report.

Strategic Plan / Policy Impact / Climate Impact

This is an operational matter not articulated in the corporate Strategic Plan.

Recommendation

It is therefore recommended that Council take the following action:

Resolved that the report of the City Solicitor dated June 23, 2025 concerning residency requirement policy for new department heads be received as information.

Respectfully submitted,

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