

December 23, 2021

Holyoke City Council  
536 Dwight Street  
Holyoke, MA 01040  
Via E-Mail: anderson-burgosj@holyoke.org

Dear Current and Incoming Members of the Holyoke City Council:

We have been contacted in recent weeks by Holyoke voters concerned about efforts to stop the seating on the Holyoke City Council of Israel Rivera and Jenny Rivera – two successful Latinx candidates who will add much-needed diversity to the Council. As you know, Mr. Rivera was the second top vote-getter in the November 2021 election for at-large Councilor, and Ms. Rivera won as a ward Councilor in Ward 1. However, some individuals have subsequently questioned whether Mr. Rivera and Ms. Rivera can serve on the Council while employed with the Holyoke Public Schools.

Both State law and the City's Charter make clear that this employment is not a bar to service. The local ordinance that has been cited as purportedly prohibiting such service must be interpreted consistently with those governing laws; otherwise, the ordinance itself would be invalid. Accordingly, should any formal challenges to these Councilors' qualifications be raised, we urge the incoming City Council to reject them and respect the will of the voters instead.<sup>1</sup>

**I. Background**

Lawyers for Civil Rights (LCR) is a non-profit civil rights organization that works on issues of racial justice and immigrant justice. This includes extensive voting rights advocacy on behalf of communities of color. In recent years, for example, we have represented Asian-American and Latinx voters in Lowell to successfully challenge Lowell's at-large electoral system for electing City Council and School Committee;<sup>2</sup> represented Black and Latinx voters in Worcester to

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<sup>1</sup> We understand that the current Council may still amend the ordinance in question to clarify its terms and explicitly bring it into compliance with the City's Charter and state law. This alternative would also resolve the issue and avoid further legal entanglements.

<sup>2</sup> *Huot v. City of Lowell*, 287 F. Supp. 3d 228 (D. Mass. 2017).

successfully challenge that city’s method of electing School Committee;<sup>3</sup> and represented a coalition of voters of color and voting-rights organizations to successfully compel the Secretary of the Commonwealth to mail out vote-by-mail applications at the height of the COVID-19 pandemic.<sup>4</sup>

Since this fall’s election, we have been contacted by voters in Holyoke who are alarmed by efforts to undermine the will of the voters and refuse to seat successful Latinx candidates for the Holyoke City Council. As you know, Latinx residents account for more than half of the City, yet the City’s elected bodies traditionally have not come close to reflecting this rich diversity.<sup>5</sup> On Election Day, City voters took significant steps to close that gap, including by electing Mr. Rivera (one of only a handful of Latinx candidates ever elected to an at-large Council seat) and Ms. Rivera (elected to a ward Council seat).<sup>6</sup>

Both candidates spoke about their employment in the schools during their campaigns – and indeed touted this experience with the voters. The electorate responded by voting them into office. Nonetheless, after the election, some individuals have begun questioning whether these successful candidates can serve on the Council while being employed by the Holyoke Public Schools, citing a local ordinance that they claim bars simultaneous service.

## **II. State Law and the City’s Charter Make Clear That There Is No Bar on An Employee of The Schools Serving on City Council.**

Both state law and the Holyoke City Charter set forth in detail who is qualified to serve on the Holyoke City Council – and make clear that individuals such as Mr. Rivera and Ms. Rivera are not barred simply by being Holyoke Public School employees.<sup>7</sup>

Massachusetts state law contains extensive conflict-of-interest provisions for local governments, striking a careful balance between allowing individuals to serve in elected office while limiting the possibility of improper conflicts-of-interest. For example, municipal employees generally may not have “a financial interest directly or indirectly, in a contract made by a municipal agency of the same city or town...” M.G.L. 268A, § 20(a). The law details various exceptions to this general rule, as well as required steps that employees must take if they learn of actual or prospective violations. *Id.*

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<sup>3</sup> *Worcester Interfaith, Inc. v. City of Worcester*, No. 21–CV–40015 (D. Mass. 2021).

<sup>4</sup> *Bertin et al. v. Galvin*, No. SJ-2020-0520.

<sup>5</sup> According to the most recent Census data, 53.9% of Holyoke’s residents are Latinx. See UNITED STATES CENSUS BUREAU, Quick Facts, available at <https://www.census.gov/quickfacts/holyokecitymassachusetts>.

<sup>6</sup> See DAILY HAMPSHIRE GAZETTE, *Majority of Holyoke City Council seats turn over* (Nov. 4, 2021) (noting that the incoming Council “will be its most diverse ever after six candidates of color were elected.”), available at <https://www.gazettenet.com/Holyoke-votes-for-City-Council-election-2021-43353562>.

<sup>7</sup> It is our understanding that Ms. Rivera may have already resigned her position with the schools, in light of objections raised. The analysis in this letter still applies, should she choose to become re-employed by the schools.

Notably, the law goes on to explicitly state that:

*This section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter.*

*Id.* (emphasis added). The law further provides that a Council member who is also a City employee cannot receive compensation for more than one office or position in a municipality, “but shall have the right to choose which compensation he shall receive.” *Id.* Clearly then, Massachusetts law specifically contemplates that city employees can also serve on the City Council, subject to the above limitations.

Holyoke’s City Charter is aligned with state law. It contains no bar to a City employee serving on the City Council. Rather, the Charter only limits a Councilor from simultaneously “hold[ing] any other *office* in or under the city government . . .” Holyoke City Charter (hereinafter “Charter”), Section 23 (emphasis supplied); *see also id.*, Section 6 (listing City “offices” such as mayor, city clerk, and city treasurer). The fact that the Charter does not more broadly bar Councilors from holding any “employment” with the City demonstrates that – as under Massachusetts state law – such individuals are allowed to serve. *See Iannelle v. Fire Comm’r of Boston*, 331 Mass. 250, 252 (1954) (under long-standing canon of statutory construction, the expression of one thing implies the exclusion of others).

### **III. Holyoke Ordinance Section 2-69 Must Be Interpreted to Be Consistent with State Law and the City’s Charter.**

Individuals raising questions about the seating of Mr. Rivera and Ms. Rivera have pointed to a local ordinance that they claim bars a Councilor from serving on the Council while being employed by the Holyoke Public Schools. *See* Holyoke Ordinance Section 2-69(g)(2) (“No employee of the city shall simultaneously serve on the city council during their time of employment.”).

However, an ordinance cannot override state law and the City’s Charter. *See, e.g., Beard v. Town of Salisbury*, 378 Mass. 435, 440 (1979) (an “ordinance is invalid which oversteps the bounds of municipal power set by State law . . .”); *see also* Charter, Section 13 (vesting legislative powers in the City Council “so far as is not inconsistent with this act. . .”). The ordinance therefore must be interpreted in a way that is consistent with state law and the Charter;

otherwise it would be invalid. *See Springfield Preservation Trust, Inc. v. Springfield Library and Museum Ass'n, Inc.*, 447 Mass. 408, 423 (2006).

Were the ordinance to be read as an outright bar, this would contradict the provisions of the Charter, and of state law, which strike a careful balance between allowing service but guarding against conflict-of-interest in specific contexts. The ordinance must therefore be interpreted to allow service of individual employees so long as their employment does not overlap with an office, such as city clerk or city treasurer.<sup>8</sup>

While it has been mentioned that other Massachusetts cities bar Council members from being city employees, these other jurisdictions have almost uniformly enacted such provisions through their charters. *See, e.g.*, Northampton Charter, Section 2-3; Chelsea Charter, Section 2-9; Gloucester Charter, Section 2-4. This is a critical distinction. A charter works as a municipal constitution, with elaborate processes for adoption and amendment that ensure a high level of deliberation. *See In re Opinion of Justices to the Senate*, 429 Mass. 1201 (1999).

The issue of whether some or all city employees should be barred from service on the City Council has tremendously important implications for diversity both on the Council and in the public schools. The school system is one of the major employers of residents of color in Holyoke, meaning that a bar on simultaneous employment and Council service is particularly salient for candidates of color – and for the voters who support them. Similarly, the need for increased diversity among employees of the public schools is critical. The school system is over 85% students of color, making diversity among school staff of paramount importance.<sup>9</sup> The fact that the purported bar on service has impacted two Latinx candidates in this election cycle, and that one of them may already have resigned from employment with the schools, dramatically highlights these far-reaching implications.

The residents of Holyoke have spoken through their Charter and have chosen, consistent with state law, not to disqualify from Council service those who are *employed* by the City but only

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<sup>8</sup> The Charter provisions reflect a considered means of encouraging public service on the one hand, while minimizing the potential for conflicts of interest on the other. Interpreting the ordinance as an outright bar would therefore not “extend the public purposes” of the Charter, *cf.* Updated Opinion on City Councilors also holding employment with the City, Letter from Associate City Solicitor and Acting City Solicitor to Acting Mayor (Nov. 16, 2021), but rather would frustrate those purposes by upsetting this careful balance.

<sup>9</sup> Massachusetts Department of Elementary and Secondary Education, School and District Profiles, *available at* <https://profiles.doe.mass.edu/general/general.aspx?topNavID=1&leftNavId=100&orgcode=01370000&orgtypecode=5>. An enormous and still-growing body of social science research demonstrates the importance for all students of teacher and school staff diversity. *See, e.g.*, EDUCATION WEEK, *Recruiting and Retaining Teachers of Color: Why It Matters, Ways to Do It* (June 2020), *available at* <https://www.edweek.org/leadership/recruiting-and-retaining-teachers-of-color-why-it-matters-ways-to-do-it/2020/06>.

those who hold another City *office*. *See supra*. The ordinance in question must be interpreted accordingly, with only this limited disqualification, or the ordinance would be invalid.<sup>10</sup>

**IV. The Incoming City Council Has the Sole Discretion to Determine the Qualifications Of Members.**

The City’s Charter explicitly states that “[t]he city council shall ... be judge of the election and qualifications of its own members.” Charter, Section 13. As Holyoke’s City Solicitor has noted, this means that if a formal challenge to seating Mr. Rivera is raised, the determination of his qualifications to serve will be within the sole discretion of the incoming City Council. Updated Opinion, *supra* note 8, at 4 (“the Council taking office in 2022 would decide the question of qualifications if it is raised.”). Importantly, this issue would be decided by a simple majority vote. *Id.* (“[a]ny votes about the certification of a new member ... requires a simple majority.”).

For all of these reasons, we urge the incoming Holyoke City Council, if there is a formal challenge to seating Mr. Rivera, to reject it. The residents of Holyoke have spoken on this issue: in the City’s Charter, which imposes no restriction on his service; and at the polls in November, when Mr. Rivera was duly elected to his at-large position as part of the most diverse Council ever. The City Council should respect the will of the voters.

Sincerely,

/s/ Oren M. Sellstrom

OREN M. SELLSTROM  
Litigation Director

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<sup>10</sup> In light of the impact on Holyoke’s communities of color, interpreting the ordinance as an outright bar would also risk running afoul of the federal Voting Rights Act of 1965. 52 U.S.C. § 10101. The Council need not reach that issue, however, given the more straightforward application of state law described above.