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**City of Worcester  
Diversity & Inclusion Advisory Committee**

**MEETING AGENDA**

**MONDAY, December 13, 2021 5:30 PM**

Join from the meeting link:

<https://cow.webex.com/j.php?MTID=m100c5ec091468c6a7e16da42a4fcb899>

Meeting number (access code): **157 778 1567**

Meeting password: **pNqfe6EHh57**

Join by phone: **415-655-0001**

*Please note: all times listed below are approximate*

<b>1. Welcome, Call to Order &amp; Roll Call.</b>	<b>5:30-5:35</b>
<b>2. Approval of Minutes September 13, 2021</b>	<b>5:35-5:45</b>
<b>3. Public Comment:</b> Public is welcome to comment on agenda items only; Chairperson will announce time limit for each speaker; a person may speak for no more than two (2) minutes on any items appearing on the agenda	<b>5:45-6:45</b>
<b>4. Discussion &amp; Vote on Public Safety Civil Service</b>	<b>6:45-7:30</b>
<b>5. Adjournment</b>	<b>7:30</b>

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[williamss@worcesterma.gov](mailto:williamss@worcesterma.gov)

## MEMORANDUM

From: Leigh Woodruff  
To: Diversity & Inclusion Committee  
Re: Civil Service System – **DRAFT FOR COMMITTEE DISCUSSION & VOTE**  
Date: August 30, 2021

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### Introduction

Worcester City Manager Ed Augustus directed the Committee on Diversity & Inclusion (“D&I”) to review the Massachusetts civil service system and recommend whether Worcester should retain the system to hire and promote employees in civil occupations (i.e., City employees who are neither elected nor appointed by elected officials).<sup>1</sup> This memorandum summarizes the D&I Committee’s work and recommendations.

### History of Civil Service

This section summarizes information the D&I Committee has learned about the history of the civil service system, nationally and in Massachusetts.

19<sup>th</sup> Century Origin. In the late 19<sup>th</sup> Century, the federal government and state governments began enacting “civil service laws” in response to “corruption, patronage, and cronyism” in public employment.<sup>2</sup> Civil service laws were meant to ensure that public employees would be hired and promoted based on merit, by using a test-based system. Also, civil service laws contained due process, grievance, and appeal procedures designed to prevent the firing of public employees with every “shift in party control” over local governments.<sup>3</sup>

Current Concerns. By the late 20<sup>th</sup> Century, concerns arose that civil service systems may undermine: **(1)** efficiency and local control in hiring; **(2)** equity in employment of women and minorities; and **(3)** recruitment and retention based on skills and job performance. In response, many states abandoned centralized exam-based systems. Today, Massachusetts is one of just a few states retaining a centralized civil service exam system.<sup>4</sup>

Massachusetts Civil Service Law. The Civil Service Unit of the state Human Resources Division (“HRD”) administers the centralized civil service system.<sup>5</sup> For **public safety jobs** (police and fire), HRD administers a multiple-choice exam every two years. About six months to a year after the exam, HRD creates a list of passing candidates; the list gives top preference to veterans and children of fallen police and fire department officers. When hiring for a vacant position, a city/ town must justify any decision to hire anyone other than the list’s top three candidates—even if a lower-listed candidate is more qualified. Plus, a job candidate who is bypassed on the list may appeal to the Civil Service Commission, which can take years to render a decision.<sup>6</sup> For **non-public safety jobs** (not police and fire), HRD has not administered a civil service exam for decades—although state law mandates an annual exam. As a result, hundreds of Worcester civil servants have remained long-term “provisional” (meaning: pending exam) employees, without civil service protections (e.g., right to a pre-termination hearing).

Opting Out of Civil Service. Municipalities can opt out of the Massachusetts civil service system. Grafton, Marlboro, Uxbridge, Athol, Webster, Swampscott, Gardner, and Framingham are among dozens of cities/towns that have recently

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<sup>1</sup> Minutes of 8/24/20 D&I Comm. Mtg. at p.1.

<sup>2</sup> <http://bgc.pioneerinstitute.org/fixing-civil-service-in-massachusetts/>; Mins. Of 9/21/20 D&I Comm. Mtg at pp. 2-4 (statements of Nina Galicia, Employment Coordinator, Worcester Human Resources).

<sup>3</sup> <https://www.governing.com/archive/civil-service-reform-passes.html>; <http://bgc.pioneerinstitute.org/fixing-civil-service-in-massachusetts/>.

<sup>4</sup> N. Riccucci, *The Use of Written Exams in Police and Fire Departments: Implications for Social Diversity*, Review of Public Personnel Administration, Dec. 2015, Vol. 35 at p. 355.

<sup>5</sup> <https://www.mass.gov/guides/learn-about-civil-service#-definitions-for-eligible-list->

<sup>6</sup> <https://www.telegram.com/news/20200112/webster-wants-out-of-civil-service-for-police-hiring>

left civil service, citing efforts to advance efficiency, equity, and skills/performance-driven employment decisions.<sup>7</sup> When Framingham left civil service in January 2021, it cited these priorities: “creating a workforce that is reflective of the community we serve”; and ability to “draw from a larger pool of candidates [and] determine preferences such as language proficiency and education levels.”<sup>8</sup> For similar reasons, Swampscott’s city council voted in 2020 to leave civil service after a special committee studied “whether Civil Service is the most efficient, effective, inclusive, merit-based system of [public] employment.”<sup>9</sup> To leave civil service, a municipality must petition the Legislature and Governor for approval.<sup>10</sup>

### **Civil Service: Non-Public Safety Positions**

Background. Nina Galicia, Worcester’s Human Resources Employment Coordinator, informed the D&I Committee that Worcester currently employs about 1,800 full time employees. Of that total number, 1,300 are civil service employees. Of those 1,300 civil service employees, several hundred work in non-public safety jobs, such as people working for the departments of public works, inspectional services, and parks, as well as school bus drivers and cafeteria staff. Ms. Galicia reported that HRD has not administered a civil service exam for such non-public safety workers for over 20 years. So, those hundreds of Worcester employees remain “provisional” (meaning: pending exam). They do not get the protections of the civil service system (e.g., they are first to be laid off during reductions in force). For these reasons, Ms. Galicia recommended: eliminating civil service appointments for non-public safety jobs in future hiring; and making permanent all current “provisional” employees.<sup>11</sup>

System Defunct. In 2004, the Pioneer Institute published “*Fixing Civil Service in Massachusetts.*” The study found 17 years ago: “for non-public safety employees, the hiring and testing systems are totally defunct, yet the laws are still written as if tests are being given on a regular basis.” “By law, a provisional appointee is only allowed to serve in that position for one year. This law is universally ignored, mostly out of necessity. The fact is, the state HRD has stopped testing for non-public safety positions entirely.” This creates an “enormous population of provisional employees, which exists in a bizarre legal vacuum, makes managing personnel extremely difficult, especially in times of reorganization or downsizing. Also, in the absence of tests, there are virtually no checks and balances ... to ensure that patronage-based hiring is not common practice.”<sup>12</sup> As to non-safety employees, the civil service system remains defunct today.

**D&I COMMITTEE RECOMMENDATION:** Worcester should remove all non-public safety jobs from the civil service system because HRD’s failure to administer exams for over 20 years has rendered the system defunct and created an underclass of “provisional” non-safety employees.

### **Civil Service: Public Safety Positions**

Background. Nina Galicia reported that Worcester currently employs about 850 people in public safety positions in the police and fire departments. For public safety jobs (unlike non-safety jobs discussed above, the civil service system provides some benefit: HRD’s post-exam list provides a pool of qualified job candidates. So, Worcester avoids spending time and money to recruit and vet potential police and fire employees.

But the civil service exam process is lengthy. If HRD administers an exam in March, then the results should be available by December. But passing candidates must then wait for a municipality to request and obtain from HRD a certified list of passing candidates. For a class of 30 cadets, the City of Worcester “goes through 200 names and requests HRD certify a large number of candidates to have a good pool to select from.” Then, the process takes an additional six months, for “background investigations and interviews.” Candidates who pass the investigations, can advance to physical and

<sup>7</sup> Id.; [http://www.webster-ma.gov/DocumentCenter/View/8948/WEBS\\_STM\\_Guide\\_1\\_13\\_2020-FINAL](http://www.webster-ma.gov/DocumentCenter/View/8948/WEBS_STM_Guide_1_13_2020-FINAL)

<sup>8</sup> <https://framinghamsource.com/index.php/2020/12/24/framingham-police-to-exit-civil-service-in-2021/>

<sup>9</sup> <https://www.swampscottma.gov/civil-service-study-committee>; <https://patch.com/massachusetts/swampscott/swampscott-fire-chief-eager-break-civil-service-system>; <https://www.wickedlocal.com/story/swampscott-reporter/2021/04/26/swampscott-civil-service-resurfaces-price-tag/7373288002/>

<sup>10</sup> <https://www.itemlive.com/2020/11/17/swampscott-town-meeting-votes-to-exempt-police-and-fire-departments-from-civil-service/#:~:text=SWAMPSCOTT%20%E2%80%94%20After%20much%20debate%20that,leave%20the%20civil%20service%20system.>

<sup>11</sup> Mins. of 9/21/20 D&I Comm. Mtg at pp. 1-5.

<sup>12</sup> <http://bgc.pioneerinstitute.org/fixing-civil-service-in-massachusetts/>

psychological testing and evaluation.<sup>13</sup>

**Diversity.** City data provided to the D&I Committee indicates: 43 of 410 fire department employees are minorities (9.5%); 93 of 488 police department employees are minorities (20%). The fire department employs 14 women (3% of force); and the police department employs 65 women (13% of force). The data provided did not track linguistic or national origin diversity among police and fire employees.

The D&I Committee reviewed two scholarly articles about diversity in civil service exam-based employment systems. **First**, based on social science studies and expert testimony in litigation, Boston College law professor Mark Brodin found: (1) civil service exams stifle hiring and advancement of qualified minority candidates; and (2) civil service exam results have little ability to predict success in public safety positions, particularly in supervisory capacities.<sup>14</sup> **Second**, Rutgers University social scientist Norma Riccucci examined why municipalities retain civil service exams to evaluate job candidates, although data indicates exams depress diversity and may not predict job performance. Prof. Riccucci interviewed many municipal HR managers who stated that exams are still used "because they have always been used," i.e., that the exam system has become "a pattern and practice ... ingrained in the cultural fabric of public sector human resources" and "mired in tradition and custom." Based on this analysis, Prof. Riccucci urges cities to "reexamine their hiring and promotion procedures for police and firefighters."<sup>15</sup>

**Preferences.** Although civil service was created as a merit-based system to replace nepotism in public-sector employment, civil service may not achieve that purpose. The Massachusetts Civil Service Law provides preferences for: (1) disabled veterans; (2) children of officers killed in the line of duty; and (3) able-bodied veterans. "[P]ersons who pass examinations for original appointment to any position in the official service shall be placed on eligible lists in [that] order," before "all others."<sup>16</sup>

According to the Pioneer Institute's 2004 study, the Massachusetts system of preferences has "supplanted" merit as the defining criterion in civil service hiring. "[F]or new hires, the test score has little or no bearing on where his or her name will appear on the hiring list. On a [then] recent civil service exam for the Boston Police, 492 applicants scored 95 or above. [But] only one of these 492 top scorers landed in the first 75 positions on the hiring list."<sup>17</sup>

**Worcester Police List.** The current "Worcester Police Officer Eligible List" illustrates the impact of the preference system. The first person on the list (S. Tarentino) is the son of a fallen police officer. Eligible persons 2-10 are all "disabled veterans." Eligible persons 11-35 on the list are all "veterans." Of those first 35 eligible persons, four speak Spanish and one speaks Vietnamese. The list does not state gender, race, or national origin information. Also, the list does not indicate how high each person scored on the civil service exam (either numerically or relative to other exam-takers).<sup>18</sup>

**D&I COMMITTEE PRELIMINARY RECOMMENDATION:** Based on the foregoing information and public input at recent meetings, the D&I Committee makes a preliminary recommendation that the City of Worcester should leave the civil service system entirely, including for the hiring, retention, and promotion of public safety employees (i.e., police and fire personnel).

However, this recommendation is "preliminary" because the D&I Committee makes it based on limited information, research, and input from the few community members who have commented during recent public meetings. At this time, the Committee lacks independent ability to investigate further. If the D&I Committee had subpoena power, the Committee would subpoena testimony and data about topics including:

- 1) The relationship between exam score and position on HRD Worcester lists.
- 2) The relationship between exam score and job performance in Worcester.

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<sup>13</sup>Mins. of 9/21/20 D&I Comm. Mtg at pp. 1-5.

<sup>14</sup> Brodin, M., Discriminatory Job Knowledge Tests, Police Promotions..., 59 Boston Coll. Law Rev. 2319 (2018).

<sup>15</sup> Riccucci, N., Use of Written Exams in Police & Fire Depts: Implications for Social Diversity, Rev. of Public Personnel Admin., Dec. 2015.

<sup>16</sup> M.G.L. c. 31, § 26.

<sup>17</sup> <http://bgc.pioneerinstitute.org/fixing-civil-service-in-massachusetts/>

<sup>18</sup> [https://www.csexam.hrd.state.ma.us/eligiblelist/eligiblelistentry.aspx?ListId=1&Location\\_Id=366&referrer=https%3a%2f%2fwww.csexam.hrd.state.ma.us%2feligiblelist%2fcommunities.aspx%3fListTypeId%3d1%26ListId%3d1&name=Police+Officer+Eligible+Lists](https://www.csexam.hrd.state.ma.us/eligiblelist/eligiblelistentry.aspx?ListId=1&Location_Id=366&referrer=https%3a%2f%2fwww.csexam.hrd.state.ma.us%2feligiblelist%2fcommunities.aspx%3fListTypeId%3d1%26ListId%3d1&name=Police+Officer+Eligible+Lists)

- 3) The relationship between HRD list rank and job performance in Worcester.
- 4) Linguistic diversity in Worcester's police and fire departments.
- 5) National origin diversity in Worcester's police and fire departments (e.g., how many officers are immigrants or children of immigrants from Vietnam, Ghana, Puerto Rico, Brazil, Cape Verde, etc.?)
- 6) The relationships between educational attainment (beyond high school) and: exam performance, eligible HRD list rank, and job performance.
- 7) How Worcester currently hires and promotes public safety employees (more detail about process and cost for police and fire).
- 8) If collective bargaining agreements can provide protections similar to civil service.

The D&I Committee recommends that the City of Worcester take the following actions:

- a) Publicly evaluate the above topics 1-8.
- b) Publicly evaluate how Worcester would recruit/hire/retain/promote public safety officers without civil service; and cost of such replacement employment system.
- c) Publicly evaluate police and fire department diversity information in comparison with 2020 census data.
- d) Hold well-publicized, open hearings to evaluate the above topics (1-8, a-c).
- e) At the hearings, require testimony from appropriate police and fire officials and human resources personnel.
- f) Invite and encourage everyone in Worcester to participate in the open hearings.
- g) Invite to the hearings all organizations whose members may be interested in the civil service issue, including for example: unions representing police and fire employees; Massachusetts Association of Minority Law Enforcement Officers; Worcester NAACP; Latino Empowerment Organizing Network; the Southeast Asian Coalition; etc.
- h) At the hearings, consider: What should be the most important criteria for recruiting, employing, retaining, and promoting City police and fire department personnel (e.g., community/neighborhood connections, language skills, education, diversity (gender, ethnicity, national origin, linguistic, etc.), performance evaluations, other criteria)?

If the City takes these actions, the D&I Committee will then analyze information learned in that process and make a final recommendation about retaining civil service for public safety jobs.