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Members/District:
Samuel Santiago #1
Dr. Bernard Reese #2
Shakeerah Mcleod #3
Miles Goodwin #5

**City of Worcester
Diversity & Inclusion Advisory Committee
MEETING AGENDA
MONDAY, June 14, 2021**

Join from the meeting link:

<https://cow.webex.com/cow/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

1. Welcome, Call to Order & Roll Call.	5:30-5:35
2. Approval of Minutes April 12, 2021	5:35-5:40
3. Introduction of new Committee Member: Miles Goodwin	5:40-5:45
4. Based on Members' requests at April meeting, Stephanie Williams to provide update on changes made to PowerPoint published on City website to inform public about D&I Committee duties & procedures.	5:45-6:00
5. Election of Chair & Vice Chair (if at least 5 Committee Members present) 6:00-6:15	
6. Discussion Civil Service Review and Plan for Next Meetings (schedule dates and agenda items re civil service). 6:15-7:00	
7. Public Comment: Members of public welcome to comment on agenda items for up to minutes each.	7:00-7:30
6. Adjournment	7:30

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MEMORANDUM

From: Leigh Woodruff
To: Diversity & Inclusion Committee
Re: Status Summary re Civil Service Review
Date: April 6, 2021

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I. Introduction

In August 2020, Worcester City Manager Ed Augustus directed the Committee on Diversity & Inclusion (“D&I Committee”) to review the civil service system and make recommendations about whether Worcester should retain that system to hire and promote employees in civil occupations (meaning City employees who are not elected or appointed by elected officials).¹ This memorandum summarizes the D&I Committee’s work on this project to date. The yellow-highlighted sections on pages 5-6 below contain this author’s ideas about proposed next steps. At our next meeting, the D&I Committee should evaluate those proposed steps and others. Then the D&I Committee should adopt a clear plan to complete the review of the civil service system, and advise the City Manager of the Committee’s plan.

II. History of Civil Service

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

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

Current Concerns. By the late 20th Century, concerns began to arise 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 (although municipalities in

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

² <http://bpc.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).

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

some of those states may still give local exams). Today, Massachusetts is one of just four states that still retain a centralized civil service exam system.⁴

Massachusetts Civil Service. The Civil Service Unit of the Commonwealth’s Human Resources Division (“HRD”) administers the centralized civil service system.⁵ For **public safety jobs** (police and fire), HRD administers a multiple-choice exam every two years. About six months to a year after each 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 town must hire from the top-listed three candidates—even if a lower-listed candidate is more qualified. If a town bypasses top candidates, the town must justify its decision; and a bypassed candidate may appeal to the Civil Service Commission, which can take years to render a decision.⁶ For **non-public safety jobs** (i.e., not police and fire), HRD has not administered a civil service exam for decades (although state law mandates an annual exam). Thus, thousands of civil servants in Massachusetts have remained long-term “provisional” employees, and do not enjoy the protections (e.g., right to a pre-termination hearing) of the civil service system.

Opting Out of Civil Service. Municipalities can opt out of the Massachusetts civil service system. Grafton, Marlboro, Uxbridge, Athol, Webster, and Framingham are among dozens of communities that have already opted out, citing their intentions to advance efficiency, equity, and skills/performance-driven employment decisions.⁷ When Framingham exited civil service in January 2021, it cited these priorities: “creating a workforce that is reflective of the community we serve,” ability to “draw from a larger pool of candidates [and] determine preferences such as language proficiency and education levels.”⁸ In 2020, the Town of Swampscott created a special “civil Service Committee” to investigate and recommend “whether Civil Service is the most efficient, effective, inclusive, merit-based system of employment.”⁹ In November 2020, the Swampscott Town Council voted to leave civil service; and the next step is for Swampscott to petition the Legislature and Governor to approve Swampscott’s exit from civil service.¹⁰

III. 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

⁴ N. Ricucci, *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.

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

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

⁷ Id.; http://www.webster-ma.gov/DocumentCenter/View/8948/WEBS_STM_Guide_1_13_2020-FINAL

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

⁹ <https://www.swampscottma.gov/civil-service-study-committee/>

<https://patch.com/massachusetts/swampscott/swampscott-fire-chief-eager-break-civil-service-system>

¹⁰ <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.>

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 non-public safety jobs for over 20 years. So, hundreds of Worcester non-public safety employees remain “provisional” (meaning: pending exam). They do not enjoy the protections of the civil service system (e.g., 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 all “provisional” employees permanent.¹¹

System Defunct. In 2004, the Pioneer Institute published “Fixing Civil Service in Massachusetts.” The article reported: “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 in place to ensure that patronage-based hiring is not common practice.”¹²

D&I COMMITTEE DRAFT 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 created an underclass of “provisional” employees without providing any benefit (e.g., HRD does not provide Worcester a list of vetted candidates for employment in non-public safety jobs).

Commented [LW1]: This author suggests the D&I Committee vote on this recommendation at our next meeting.

IV. 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, the benefit of civil service system is that HRD provides a pool of qualified candidates. So, the City avoids spending resources 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 then passing candidates on the HRD list must wait for a municipality to request the list to be certified for their use. Then, the process takes an additional six months, for “background investigations and interviews.” Candidates who pass the investigations, advance to physical and psychological testing and evaluation.¹³ D&I Committee Member Kosmidis shared his experience as an applicant for the Worcester police department: Mr. Kosmidis

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

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

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

passed the civil service exam; but he was still not hired more than two years into the process; and he eventually accepted a position in the private sector.¹⁴

Diversity. Ms. Galicia reported that a consent decree requires Worcester to hire one minority (meaning Black or Latino person under the decree) for every three non-minority persons hired in the police and fire departments. 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%); and the police department employs 65 women (13%). 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 exam use stifles 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.¹⁵ **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 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."¹⁶

Preferences. Although civil service was created to provide a merit-based system for public-sector employment, civil service may not currently achieve its 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. "The names of persons 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."¹⁷

According to the Pioneer Institute, 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 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."¹⁸

¹⁴ Id. at p. 5.

¹⁵ Brodin, M., Discriminatory Job Knowledge Tests, Police Promotions..., 59 Boston Coll. Law Rev. 2319 (2018).

¹⁶ Riccucci, N., Use of Written Exams in Police & Fire Depts: Implications for Social Diversity, Rev. of Public Personnel Admin., Dec. 2015.

¹⁷ M.G.L. c. 31, § 26.

¹⁸ <http://bgc.pioneerinstitute.org/fixing-civil-service-in-massachusetts/>

Worcester Police List. The current "Worcester Police Officer Eligible List" illustrates the impact of statutory preferences. 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 are all "veterans." Of those first 35 eligible persons, four speak Spanish (nos. 10, 11, 12, 20) and one speaks Vietnamese (no. 23). 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 others who passed the exam).¹⁹

D&I COMMITTEE RECOMMENDATION: The D&I Committee does not yet have enough information to make a recommendation about whether Worcester should retain the civil service system for hiring and promotion of public safety employees (i.e., police and fire personnel). Below is a plan to complete that review and make a recommendation.

V. Plan for Review & Recommendation re Public Safety

To conduct a complete review and make an informed recommendation about whether to retain civil service for hiring and promotion of public safety personnel, the D&I Committee needs additional information from the City and input from community members and experts. The Committee will propose a series of public meetings over the coming months. To ensure maximum engagement, the City should publicize all upcoming meetings and topics so that community members know this important issue is under review.

A. Information Needed From City

To make a full review and informed recommendation, the D&I Committee needs additional information from the City of Worcester. We recognize that the City may not have compiled all data requested below. But to the extent such data and information is accessible, the Committee requests the following:

- 1) Data about relationship between exam score and position on Worcester lists.
- 2) Data about relationship between exam score and job performance.
- 3) Data about relationship between Worcester list rank and job performance.
- 4) Data about linguistic diversity in Worcester police and fire departments.
- 5) Data about national origin diversity (e.g., how many Worcester officers are immigrants or children of immigrants from Vietnam, Ghana, and Puerto Rico?)
- 6) Data about the relationship between educational attainment (beyond high school) and: exam performance; eligible list rank; and job performance.
- 7) More detailed information about how Worcester hires and promotes public safety employees.
- 8) 2020 Census data about Worcester demographics (when available).

¹⁹https://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

- 9) Collective bargaining agreements related to police and fire department employees.
- 10) A list of all lawsuits (party names and docket numbers) alleging discrimination in employment against the Worcester police or fire departments.

B. Input from Experts & Community Members

To make a full review and informed recommendation, the D&I Committee also needs input from experts and members of the Worcester community. Again, we recognize that not all of the persons and organizations listed below may be able to participate. But we believe that input from those listed below (and others) will enhance this process.

- 1) Police and Fire Chiefs and HR personnel within those departments
- 2) Unions representing police and fire employees
- 3) Mass. Association of Minority Law Enforcement Officers
- 4) Worcester NAACP
- 5) Latino Empowerment Organizing Network (LEON)
- 6) Leaders and members of diverse communities in Worcester
- 7) Decision-makers from Swampscott, Framingham, and other cities that have recently opted out of civil service system, as well as from any cities that have examined civil service recently and decided to retain it (about their process and reasoning)
- 8) Local academics with relevant areas of study (e.g., BU Law Professor Mark Brodin)
- 9) Unsuccessful applicants for jobs with Worcester police and fire departments
- 10) Administrators of local police and fire academies

C. Questions to be Analyzed

Based on information requested from the City and input from experts and members of the Worcester community, the D&I Committee will schedule a series of public meetings to analyze questions including the following:

- 1) Does civil service ensure hiring and promotion based on merit and job performance?
- 2) Does civil service depress diversity in Worcester's police and fire departments?
- 3) Is the civil service process too lengthy and cumbersome (given any benefits)?
- 4) How would Worcester recruit/hire/promote public safety officers without civil service?
- 5) Do/can collective bargaining agreements provide protections (in lieu of civil service)?
- 6) What are/should be the most important criteria for employment of police and fire employees (e.g., community and neighborhood connections, language, education, diversity, demonstrated past community involvement, etc.)?