



TOWN OF PLYMOUTH

BOARD OF SELECTMEN / TOWN MANAGER
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MEMORANDUM

TO: BOARD OF SELECTMEN
FINANCE AND ADVISORY COMMITTEE

FROM: MELISSA ARRIGHI, TOWN MANAGER

SUBJECT: RESCIND CIVIL SERVICE

DATE: AUGUST 18TH 2016

Through two separate Special Acts I am seeking to remove the Civil Service requirement for the positions of Fire Chief, Deputy Fire Chief, Police Chief and Police Captain. These articles come at a time when it has been increasingly more difficult for the Town to recruit and encourage those officers within the rank and file to seek career enhancing promotional opportunities such as the aforementioned. Additionally, I believe that rescinding Civil Service will provide the Town with greater flexibility in recruiting, hiring and maintaining the best and the brightest to serve this community. I have listed our challenges and opportunities below.

Fire Department Challenges

Plymouth Fire requested a Deputy Chiefs Exam and a Fire Chiefs Exam Fall of 2011; the exam was scheduled (with other communities statewide) in March 2012.

- March 2012 Deputy Chief and Fire Chief Exams, the exam is open to Battalion Chiefs and Deputy Fire Chiefs, not enough applicants signed up (need 4) Exam closed to Plymouth and automatically rescheduled for the following year open to the next lower rank.
- March 2013 Deputy Chief and Fire Chief Exams, automatically posted for Plymouth due to not enough applicants in 2012, the exam is open to Deputy Fire Chiefs, Battalion Chiefs, and Captains. Not enough applicants signed up (need 4) Exam closed to Plymouth and automatically rescheduled for the following year open to the next lower rank.
- March 2014 Deputy Chief and Fire Chief Exams, automatically posted for Plymouth due to not enough applicants in 2013, the exam is open to Deputy Fire Chiefs, Battalion Chiefs, Captains and Lieutenants. No one signed up for either Exam (need 4) Exam closed to Plymouth and automatically rescheduled for the following year open to the next lower rank.

- March 2015 Deputy Chief and Fire Chief Exams, automatically posted for Plymouth due to not enough applicants in 2014, the exam is open to Deputy Fire Chiefs, Battalion Chiefs, Captains and firefighters (anyone alive). No one signed up for either Exam (need 4) Exam closed to Plymouth for 2015 and in accordance with Civil Service Regulations (PAR) both the Deputy Fire Chief and Fire Chiefs exams are closed out and will not automatically be rescheduled.

Currently, both the Chief and Deputy Chief have enough time in service to retire (Deputy Young retired July 5 this year), and there is no available list to fill the current vacancy. If there are further retirements and openings there are no lists to appoint a permanent Deputy Chief or Fire Chief. At this time, the Fire Department has tried for over four years to establish a Civil Service Promotional list for Fire Chief and Deputy Fire Chief, without any personnel signing up. There is currently no available list for Deputy Fire Chief or Fire Chief and the Town cannot participate in the regularly scheduled exam for this year (March 2016).

Police Department Challenges

The Department waited four (4) years to establish a Civil Service Certified Lieutenants List. The Police Department most recent challenges are below:

1. Fall 2011 - Lieutenant's Exam Requested
 - Not enough Applicants
 - Postponed to October 2012
2. Fall 2012 - above Lieutenant's Exam opened to Sergeants and Patrolman
 - Not enough Applicants
 - Cancelled - waited until 2014 – (more eligible candidates)
3. Fall 2014- Lieutenant's Exam Requested
 - Not enough Applicants
 - Postponed to October 2015 and opened to Police Officers
4. Fall 2015-Lieutenant's Exam Requested
 - Exam Administered - Current List Established

Benefits to the Town by removing Civil Service:

The benefits to the Town are numerous. The below benefits have been realized by the other 81% Police Departments and 85% Fire Departments throughout the Commonwealth who have eliminated the Civil Service requirement for the Fire Chief and Police Chief.

- Removing the Chiefs from Civil Service allows for greater flexibility within the hiring and promotional process.
- The department can determine the expiration date of the hiring and promotional lists.
- The police/fire department can set minimum eligibility guidelines not allowed under Civil Service such as higher education levels.
- The town and the department can determine what hiring preferences they want to acknowledge (residency, military experience, Paramedic/EMT certifications, language proficiency, prior academy training)

- Instead of the candidate ratio of (2N+1) departments would have a much larger candidate pool to select from.
- Ability to incorporate community and department specific criteria into promotional exams.
- Ability to offer promotional exams that more accurately gauge a candidate's suitability to become a supervisor.
- Attributes beyond test score, such as work product, contribution to the community and performance evaluations would factor into promotions.
- Ability to mandate a probationary period for promotions.
- There are many companies that provide promotional exams for police/fire departments.
- The exam score or rank does not have to be the determining factor for who the department interviews and promotes.
- Current employees retain their civil service status.
- Possible Promotion Criteria
 - Job related experience.
 - Performance evaluation.
 - Supervisory evaluation of the employee's potential.
 - Score on promotional exam.
 - Sick leave record.
 - Formal education.
 - Training and education through career development.
 - Disciplinary record.
 - Attitude toward the department and police work.
 - Work ethic and initiative.
- You broaden your promotional pool exponentially (100 applicants as compared to 2N+1)
- The appointing authority can decide what's important for their community, rather than being dictated
- You raise the level and competitiveness of the entire promotional process; as a result, your personnel raise the level of "their game"

Christopher Badot

From: Ed Bradley
Sent: Friday, August 19, 2016 9:19 AM
To: Melissa Arrighi; Derek Brindisi; Christopher Badot
Cc: Mike Botieri
Subject: Civil Service removal

Massachusetts General Laws, Chapter 4 Section 4B

(e) This section shall not affect any contractual or civil service rights which have come into existence between the city, town or municipality and any officer or employee thereof as a result of the original acceptance of any such law or the provisions thereof; provided, however, that such revocation shall apply to the successor to the incumbent officer or employee, which application shall prevent such contractual or civil service right from automatically continuing with respect to such successor officer or employee.

The entire wording MGL Chapter 4 Section 4B ;

[Section 4B_Rescission of laws previously accepted by cities, towns or municipalities](#)

[PREV](#) [NEXT](#)

Section 4B. At any time after the expiration of three years from the date on which a law to take effect upon its acceptance by a city or town or a municipality as defined in section four, or is to be effective in such cities, towns or municipalities accepting its provisions, has been accepted in any such city, town or municipality such statute may be revoked in the same manner as it was accepted by such city, town or municipality, but such revocation shall be subject to the following restrictions:

- (a) This section shall not apply if such law provides for another manner of revocation.
- (b) This section shall not apply to any such law which authorizes, but does not require, acceptance by a city, town or municipality to act.
- (c) This section shall not apply to any action taken under chapter thirty-two or thirty-two B.
- (d) This section shall not apply to any action taken to establish a regional district, authority or other entity which involves another city, town, municipality, district or other governmental entity.

(e) This section shall not affect any contractual or civil service rights which have come into existence between the city, town or municipality and any officer or employee thereof as a result of the original acceptance of any such law or the provisions thereof; provided, however, that such revocation shall apply to the successor to the incumbent officer or employee, which application shall prevent such contractual or civil service right from automatically continuing with respect to such successor officer or employee.

If a petition signed by five per cent or more of the registered voters of a city or town is filed in the office of the city or town clerk within sixty days following a vote other than a vote taken by voters on an official ballot to revoke the acceptance of any optional provision of the General Laws, requesting that the revoking of such acceptance be submitted as a question to the voters of such city or town, said vote to revoke shall be suspended from taking effect until such question is determined by vote of the registered voters voting thereon at the next regular city or town election, or if the city council or board of selectmen or other authority charged with calling elections shall so direct, at a special election called for that purpose. Petitions filed requesting the placement of the question or revocation on the ballot for determination by the voters shall be substantially in conformity with the provisions of the law governing the signing of nomination papers for city or town officers, as to the identification and certification of names thereon, and submission to the registrars thereof. A brief summary of the relevant section or sections of the General Laws shall also appear on the official ballot. If such revocation is favored by a majority of the voters voting thereon, the acceptance of said optional law shall be revoked and it shall become null and void beginning with the first day of the month next following said vote of revocation. The question to be placed on a ballot shall be essentially as follows:

"Shall the acceptance by ____ (City, Town) of section(s) ____ of chapter ____ of the General Laws be revoked?

YES ____ NO ____".

If, on the sixty-first day following the date a vote has been taken to revoke the acceptance of an optional provision of the General Laws, and no petition as aforesaid has been filed, the vote to revoke shall become effective forthwith.

If at the time a city, town, municipality or district is authorized to revoke its acceptance of a law under the provisions of this section and such city, town, municipality or district has adopted a change in charter or otherwise is required to adopt a different procedure for acceptance of such law other than that procedure used for its original acceptance, then the procedure for acceptance in effect at the time of revocation shall be the manner for revoking such original acceptance.

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Civil Service – Articles 11 and 12 (excerpt from Town Manager’s Report to Selectmen on September 6, 2016)

At our last Selectmen’s meeting, we presented the articles that requested the elimination of Civil Service for our Non Union Positions (chiefs, captains, deputy chiefs). The question arose about what protections do non-union, non civil service employees have in terms of discipline. I represented that they had some protections under the personnel bylaws. That was incorrect. Any protection/recourse from discipline imposed by the Town Manager falls under our Town Charter, not the Personnel Bylaws (see below).

The Town Manager shall:

a. unless otherwise provided herein and in Section 2 of Chapter 6 of this Charter, and except as may be otherwise provided in Civil Service Law, appoint, suspend, or remove all department heads, a Board of Assessors, and all officers, subordinates, and employees of the town, including those under grant funding, except employees of the school department. The Town Manager shall appoint a town clerk, whose duties shall be as specified in general or special legislation... Except as may be otherwise provided in Civil Service Law, appointments, suspension, or removals of Department and Division Heads, or equivalents regardless of title, shall take effect on the fifteenth (15) day after the Town Manager files notice of the action with the Board of Selectmen unless the Board shall within that period, by a vote of four members veto the action....

Because there is no specific reference to discipline, or an appeal procedure, in the bylaws, the non union employees are essentially employees at will. If they feel wrongfully aggrieved, their options would be to file suit against the town or appeal to the Selectmen for a veto.

In thinking about that, the removal of the positions from Civil Service (for incoming employees, not the current employees in the positions) has some risk. If this article passes at the upcoming Town Meeting, the current employees are still protected by Civil Service. This will give us time to come up with “good cause” language to propose to the 2017 Spring Special Town Meeting as an addition to the personnel bylaws, as well as updating the Town Charter section above and removing the Civil Service reference. Not only will this additional ‘good cause’ language help protect any new Chiefs, Captains, and Deputy Chiefs, it will also afford the other non-union employees with some process for discipline. Finally, if that passes, at the 2017 Spring Annual Town Meeting, I will propose that the Town rescind MGL Chapter 48, Section 42 and MGL Chapter 41, Section 97A. These two statues (attached) provide for the “Strong Chiefs” language, however, the language of the law conflicts with our Town Charter in terms of the appointing authority, as well as setting regulations, and is somewhat outdated overall. Although it has never been questioned, this will be a good opportunity to resolve that ambiguity and also add some of the language contained therein, if necessary, to the personnel bylaws themselves. I have spoken to Counsel about this, however, prior to these Town Meetings, we will provide you with an official legal opinion.

Melissa Grabau Arrighi
Town Manager
Town of Plymouth