

## COMMONWEALTH OF MASSACHUSETTS

### CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

Tracking Number: I-24-095

Re: Request for Investigation by Edward J. McGinn, Jr. and Two Others regarding the filling of the position of Police Chief in the City of Worcester.

### RULING ON CITY'S MOTION TO DISMISS

#### *Background*

On June 24, 2024, the Petitioners, Edward J. McGinn, Jr., Sean J. Fleming and Carl J. Supenor, (Petitioners), all Deputy Police Chiefs in the City of Worcester (City)'s Police Department, filed a petition with the Civil Service Commission (Commission), asking the Commission to investigate the alleged failure of the City to fill the position of permanent, full-time Police Chief through the process required by the civil service law and rules.

On August 20, 2024, I held a remote show cause conference which was attended by the Petitioners, counsel for the City, a City representative, and counsel for the state's Human Resources Division (HRD). After hearing oral argument during the recorded proceeding, the City and the Petitions submitted briefs to the Commission.

On October 17, 2024, the Commission, after concluding that the Petitioners had presented sufficient evidence that, after opening an investigation, the Commission may find that the City, at least since April 9, 2024, had been acting in violation of the civil service law and rules by employing a provisional police chief after rescinding its September 2023 commitment to the state's Human Resources Division to move forward with filling the position on a permanent basis (and refusing to comply with the civil service law and rules on a going forward basis), issued an [initial response](#) opening an investigation and scheduling an investigative conference.

#### *City's Motion to Dismiss and Petitioners Opposition*

Since the issuance of that order, [Chapter 238 of the Acts of 2024](#) was passed into law on November 20, 2024. Section 284 of this Act states:

Notwithstanding chapter 31 of the General Laws or any other general or special law to the contrary, a city or town, on behalf of which legislation has been duly filed with the general court between January 4, 2023 and July 31, 2024, inclusive, to remove any or all positions within the police or fire department of the city or town and which includes an documented local approval as acknowledged by the clerk of the senate or house of

representatives, may exempt any position within the police or fire department as specified within such legislation without the need for any further action by the general court on such legislation; provided, however, that any city or town that seeks an exemption pursuant to this section shall submit a letter indicating that the city or town still seeks such exemption from said chapter 31 to the personnel administrator of the division of human resources within the executive office for administration and finance, the joint committee on public service and the chair of the civil service commission duly signed by: (i) the mayor or city manager, in the case of a city, or the chair of the select board or town manager, in the case of a town; and (ii) the police chief or fire chief, as applicable, of the department seeking exemption; provided further, that any such letter shall be received by the personnel administrator of the division of human resources in proper form not later than February 15, 2025; and provided further, that the exemption for the position or department for which such letter is so submitted shall take effect on March 1, 2025.

On April 9, 2024, within the applicable window referenced above, [legislation \(H.4590\)](#) was filed on behalf of the City of Worcester to remove the position of Police Chief and Deputy Police Chief from the civil service law. [A new draft of that legislation \(H.5107\)](#) was reported from the Joint Committee on Public Service on November 18, 2024 and, as of the date of this ruling, was still moving forward in the Legislature. H.5107 limits the civil service removal to the position of Police Chief, as opposed to both Police Chief and Deputy Police Chief.

On November 21, 2024, the City submitted a letter to the individuals referenced in Section 284, confirming its intent to exempt both the Police Chief and Deputy Police Chief position from civil service.

In its motion to dismiss, which I consider to be a request for the Commission to close the investigation, the City argues that the enactment of Chapter 238 of the Acts of 2024, coupled with the submission of the confirmation letter referenced above, exempts the position of Police Chief from civil service law and divests the Commission of jurisdiction.

The Petitioners submitted the following arguments against closing the investigation: a) The City has been in violation of the civil service for several months; b) H. 4590 is no longer “applicable or viable” and the only “applicable” legislation and date that should apply is H.5107, reported out on November 18, 2024, which is outside the window referenced in Section 284; and c) a decision on whether the City violated the civil service law will inform the public and permit the Petitioners to seek recourse in other venues.

### ***Final Response***

The issue before the Commission in this investigation relates solely to filling the position of Police Chief in the City of Worcester. In that regard, the plain language of Section 238 of the Acts of 2024 exempts the Police Chief position from the civil service law, effective March 1, 2025. Specifically, the new law states in part that:

... a city or town, on behalf of which legislation has been duly *filed* with the general court between January 4, 2023 and July 31, 2024, inclusive, to remove any or all positions within the police or fire department of the city or town and which includes an documented local approval as acknowledged by the clerk of the senate or house of representatives, may exempt any position within the police or fire department as specified within such legislation without the need for any further action by the general court on such legislation ...

H. 4590, which, in part, exempts the Worcester Police Chief position from the civil service law, was indeed *filed* between January 4, 2023 and July 31, 2024—i.e., on April 9, 2024. The fact that a new draft of H.4590 was reported out of Committee and is currently working its way through the Legislature, does not change the fact that H.4590 was filed on April 9, 2024. Therefore, the newer development does not alter the fact that the position of Worcester Police Chief will be exempt from the civil service law come March 1, 2025.<sup>1</sup>

While I carefully considered the Petitioners' other arguments, I am not persuaded that an investigation into the filling of a position that has been statutorily exempted from the civil service law would be of value to the Petitioners, the City, or the civil service system.

I note, however, that the crux of the City's argument in opposing this investigation was featured in their written brief, which states in part that the City seeks to remove the position of Police Chief from civil service " ... in an effort to expand and diversify candidate pools for the highest ranking positions for its police department", citing "the City's motivation to avoid civil service restrictions and seek a larger and more diverse applicant pool." While the Commission has been divested of jurisdiction over the Police Chief position, I nonetheless encourage the City to follow through on that noble commitment.

For all of the above reasons, I recommend that the Commission close the investigation under Tracking No. I-24-095.

Civil Service Commission

*Christopher C. Bowman*  
Christopher C. Bowman  
Chair

On October December 19, 2024, the Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) voted to accept the recommendation of the Chair and close the investigation.

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<sup>1</sup> In fact, it would appear that, if the current version of H.5107 were to be enacted prior to year's end, the position of Police Chief in Worcester would still be removed from civil service and the removal date for the Police Chief could possibly occur *prior* to March 1, 2025.

Notice:

Petitioners

Ian Keefe, Esq. (for City)

Tim D. Norris, Esq. (for City)