



SPONSOR: Town Council

TOWN OF FRANKLIN

RESOLUTION 16-58

REQUEST FOR LEGISLATION

Exempting all Positions in the Fire Department from Civil Service Law

BE IT RESOLVED THAT THE Town of Franklin, acting by and through the Town Council, hereby requests the General Court to enact a Home Rule Petition to exempt all positions in the Town of Franklin's Fire Department from the Civil Service Law as follows:

AN ACT EXEMPTING ALL POSITIONS IN THE TOWN OF FRANKLIN'S FIRE DEPARTMENT FROM THE CIVIL SERVICE LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary, all positions in the Town of Franklin's Fire Department in the Town of Franklin shall be exempt from Chapter 31 of the General Laws.

SECTION 2. Section 1 shall not impair the civil service status of any person holding a position in the Town of Franklin's Fire Department on the effective date of this Act.

SECTION 3. This act shall take effect on or _____.

DATED: _____, 2016

VOTED:

UNANIMOUS _____

A True Record Attest:

YES _____ **NO** _____

ABSTAIN _____

Teresa M. Burr
Town Clerk


ABSENT _____

Judith Pond Pfeffer, Clerk

Office of the Town Administrator



MEMORANDUM

Date: September 29, 2016
To: Town Council
From: Jeffrey Nutting, Town Administrator 
Subject: Removing the Fire Department from Civil Service

As the Council is aware, all employee units in Franklin have been removed from Civil Service with the exception of the Fire Department (see attached). The Police Department was removed in 2012. The Town Council in 2014 voted to remove the Fire Department from Civil Service; but, due to an oversight on my part the wording was incorrect so it never took effect. We were in the middle of a protracted collective bargaining dispute so it made no sense to revisit the issue at that time. Since that time, the Town Council approved the arbitration award and a new three year collective bargaining agreement.

This new resolution would petition the legislature to pass a home rule amendment to remove the Department from Civil Service.

As a reminder, all current employees would be "grandfathered" under Civil Service if they ever wanted to transfer to another Civil Service department, be on a statewide layoff list, or if under a disciplinary hearing they chose to appeal to the Civil Service commission in lieu of arbitration. We rarely have discipline issues that rise to that level and experience would suggest that more employees choose arbitration over Civil Service in those disciplinary matters.

In 2014 we worked out a process on the promotional process once Civil Service was eliminated (draft enclosed). We would have to revisit the issue with the Union to see if there are any changes to the process they would like to consider. We do have a written agreement for the police department that has worked very well.

I am happy to answer any questions or feel free to reach out to the Police Chief on how the recruitment and promotions of police officers has worked since 2012.

cc: Gary McCarraher
Charles Allen



Stephanie Lutz
Human Resources Director
355 E. Central Street

Phone (508) 553-4810
Fax (508) 553-4896
Franklin, Ma 02038

MEMORANDUM
TOWN OF FRANKLIN

TO: Jeffrey Nutting, Town Administrator

FROM: Stephanie Lutz, Human Resources Director

DATE: October 17, 2013

SUBJECT: Exemption from Civil Service

As the discussion about Civil Service continues to develop, the following dates may be helpful.

1937	Town Meeting Vote – Article 41 – accepted Sec 48 for Police Department
2/1950	Adopted by Ballot - Civil Service Local Labor Service
4/1974	Exempt Town Accountant from Civil Service
4/1975	Exempt Call Firefighters
7/1980	Exempt Superintendent of Buildings and Grounds
7/1981	Exempt Water Pump Station Operator
7/1982	Exempt Council on Aging
7/1982	Exempt Recreation Department
7/1982	Exempt Library Employees
9/1989	Exempt Clerical positions
7/1990	Exempt School Department Director of Administrative Services
1/1998	Exempts School Nurses (employees hired after)
10/1999	Exempt School Custodians (employees hired after)
7/2003	Exempt School Cafeteria Workers (employees hired after)
7/2007	Exempt Department of Public Works (employees hired after)
7/2012	Exempt Police Department (employees hired after)

Civil Service was initially put in place to protect the employment process from political favoritism, retaliation, and nepotism. At that time, public sector employees did not have the right to organize into associations or unions.

In 1962 President John F. Kennedy, by executive order, granted federal employees the modified right to unionize and bargain over non-wage items. Then in 1972 the Commonwealth enacted M.G.L. 150E, which outlines the collective bargaining and dispute resolutions processes. This enables employees and bargaining units to agree to terms and conditions for all aspects of employment from the hiring process to termination or retirement on terms that best respond to the unique employment and operational needs. As a result the Civil Service mechanisms have been replaced by Collective Bargaining Agreements. The groups exempted from Civil Service over the past 30 years reflect recognition of this change.



TOWN OF FRANKLIN

RESOLUTION 14-07

**EXEMPTION OF ALL POSITIONS IN THE FIRE DEPARTMENT
FROM THE CIVIL SERVICE LAW**

WHEREAS, Over the years all future hires in all positions except the Fire Department have been exempted from the provision of G.L. Chapter 31 Civil Service.

WHEREAS, The Town of Franklin has been proposing to Local 2637, I.A.F.F., since the Summer of 2012, its intent to revoke its acceptance, under G.L. c. 4, §4B, of G.L. c. 31, the Civil Service Law.

WHEREAS, the Town and the Union have agreed to negotiate separately, to the extent required by law, on the impact of the Town revoking its acceptance of c. 31 for all Fire Department positions.

NOW BE IT RESOLVED by the Town of Franklin by and through its Town Council:

1. All positions in the fire department shall be exempt from the provisions of G.L. Chapter 31, the Civil Service Law.
2. Notwithstanding the foregoing, this resolution shall not affect any civil service rights of any person holding a position in the fire department on the effective date of this resolution.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

Dated: 2/12 2014

Voted: passed

UNANIMOUS _____

YES 8 NO 0

ABSTAIN 0

ABSENT 1

Judith Pond Pfeffer
Judith Pond Pfeffer, Clerk
Franklin Town Council

*A True Record Attest:
Quinn L. Pellegrini
Town Clerk*

*not needed
correctly*

MEMORANDUM OF AGREEMENT

This Memorandum sets forth the parties' agreement concerning the negotiation of the impact of the Town's revocation of its acceptance of Civil Service law.

1. **Effect of Revocation.** The revocation of the Civil Service statute shall not affect any contractual or civil service rights which have come into existence between the Town and any person employed as of the date of revocation, as a result of the original acceptance of such law.

2. **Seniority.**

a. For employees appointed before the removal of the Department from Civil Service, the Civil Service definition of seniority shall continue to apply for purposes of layoffs, demotions, and recall.

b. For employees appointed after the effective date of removal from Civil Service, seniority shall be based on the employee's date of appointment in the Department.

3. **Layoff and Recall.**

a. Employees appointed prior to the Town's revocation of the Civil Service statute shall maintain all rights regarding layoffs, recall, inclusion on the re-employment list, and lateral transfers, and the procedures under M.G.L. c. 31 governing such matters and any appeal shall continue to apply.

b. For employees appointed after the removal of the department from Civil Service, the term "layoff" means a reduction in the number of employees due to a lack of work, lack of funds or abolition of position. In the event of a layoff, the least senior employee or employees shall be laid off first. In any such case a five (5) days' advance notice of the contemplated layoff shall be given to the employee in writing; a copy of such notice shall also be given to the Union.

A laid-off employee shall have recall rights for a maximum period of seven (7) years. Recall shall be in order of seniority with the employee with the highest level of seniority having first right of recall. Notice of recall shall be via certified mail and by email to the employee's last known address and email address, with a copy to the Union President. A recalled employee shall notify the Town Administrator within twenty-one day (21) calendar days of receipt of the recall notice of his or her intention to return to the Franklin Fire Department. Any person refusing or failing to exercise such recall opportunity within such twenty-one (21) day period shall be deemed to have waived his or her right of recall permanently and absolutely. Employees must be available to work within twenty-one (21) calendar days of receiving notice in order to be eligible for recall, except as follows in the next paragraph.

Any person refusing or failing to exercise such recall opportunity within such twenty-one day period shall be deemed to have waived his or her right of recall permanently and absolutely except as follows:

- (1) An employee who is on active duty in the military for an enlistment period, or an employee who is obligated by contract to continue in the employ of another employer, shall have the right to maintain eligibility for recall for the next vacancy,; or
- (2) The recalled employee may within the twenty-one day period request the Town Administrator in writing an extension of time to return to work in Franklin for exigent reasons which shall be specified. In considering any such request the Town Administrator shall weigh specific exigent circumstances justifying an extension and the Town's need to fill a vacancy.

The exceptions listed above shall not include situations where the employee being recalled has alternative employment with another town or with a private ambulance company, unless obligated by contract to continue for a term in the employ of another employer.

Prior to returning the laid off employee to work the Town shall have the right to obtain a CORI report for determining whether any actions reflected on such report, after the date of the

layoff, affect the employee's qualifications for re-employment. Prior to returning to work a recalled employee may be required to undergo a physical examination, and such other background investigation of conduct occurring after the layoff as the Fire Chief deems necessary and appropriate. The Town shall bear the cost of any physical examination it requires under this section. If, based on the results of such examination or investigation, the Town Administrator rescinds the offer of recall he shall provide the employee with a written statement of his reasons for the rescission. This rescission may be subject to the grievance and arbitration provisions of the contract.

In the event of a layoff in the rank of captain or lieutenant, the incumbent with the least length of service in grade shall have the option to bump into a position in the next lower grade of the Department. If two employees have equal length of service in grade, the employee with less total service with the Department shall be affected by the layoff.

Laid off employees will be responsible for maintaining any required licenses or certifications, provided that laid off employees are allowed to attend department training sessions, if available, at no cost to the employee or the Town. Laid off employees will be allowed to attend courses which involve a cost provided they pay their portion of the costs. Laid off employees who attend such Town-sponsored training sessions and/or courses, shall as a condition of attendance, sign a Release of All Claims on a form provided by the Town indicating that they are participating on a voluntary basis and not as employees of the Town and, except in instances involving gross negligence on the part of the Town, they accept all risks associated with participation in the program. To facilitate maintenance of required licenses or certifications, the Town agrees to continue to affiliate laid off firefighters, with the Office of Emergency Medical Services, if they do not otherwise have employment with such affiliation.

4. **Discipline.** Employees appointed prior to the removal of the Town from Civil Service shall retain their right to appeal discipline imposed under M.G.L. c. 31, § 41 to the Civil Service Commission.

5. **Promotions.** The parties have negotiated a separate agreement (attached) regarding promotion procedures to govern promotions to fill vacancies which occur after the effective date of the removal of the department from Civil Service.

LOCAL 2637, I.A.F.F.,

TOWN OF FRANKLIN,
By its Town Administrator

Jeffrey D. Nutting

Attachment

TOWN OF FRANKLIN FIRE DEPARTMENT PROMOTION POLICY- New Provision in CBA

Section 1. Promotion Process.

The purpose of this process is to identify the best qualified individual for promotion without regard to personal preference, prejudice or unsubstantiated opinions.

- a. The initial component of the promotional process shall be an examination administered by a professional testing firm hired by the Town. The written examination will be provided for eligible employees at no cost.
- b. At least one hundred eighty (180) (180) calendar days prior to any written promotional exam for Lieutenant or Captain, the department will announce by posting a notice including:
 - (1) The title of the position;
 - (2) The eligibility requirements
 - (3) description of the duties of the position
 - (4) The date, time and location of the written examination;
 - (5) The reading list of resource and reference materials upon which the test and the assessment center will be based.

Such notice will be posted conspicuously at all fire stations. Eligible employees who are out of work due to illness, injury, active military leave or other long term absence shall be mailed and/or emailed a copy of the examination notice at their last known address or email address.

A reference book list for the rank of Lieutenant and Captain will be posted and maintained at all times with the most current reference books. No changes to the book list will be made once notification of an exam has been announced.

While there may be exam questions for lieutenants and captains positions which overlap, the exam shall contain questions specifically designed to measure qualifications for each rank.

A procedure will be established by the testing firm to mask the identity of those candidates taking the written exam.

The passing score, established by the Town, to the written examination is 70. The written examination will be scored by the testing firm. The release of the written

marks will be made in a timely manner, the contemplated timeframe to be announced with the notice of the exam. (The Town will request that the release of the written marks occur within fifteen (15) days of the exam date.) Candidates shall receive a written breakdown of their score from each category of the examination and a final score. Upon receiving written exam scores, candidates shall then have five (5) business days to review the promotional examination in accordance with the review policy in place by the testing firm.

- c. To be eligible for promotion, the following time in grade criteria must be met for each rank:
 - (1) Lieutenant: A candidate must be a permanent member of the Department with a minimum of three (3) years of continuous service in the rank of firefighter.
 - (2) Captain: A candidate must be a permanent member of the department with a minimum of seven (7) continuous years of service of which three (3) years shall been at the rank of Lieutenant. In the event there are less than three applicants for a captain's position, the time-in-rank of lieutenant will be waived.
- d. All candidates must notify the Human Resources Director in writing of their interest in taking the exam by submitting a letter of intent and documentation of qualification for the posted position at least thirty (30) calendar days prior to the test date.
- e. Only candidates who pass the written examination as defined in paragraph (g) below will be included in subsequent phases of the promotional process.
- f. Examinations for Lieutenant and Captain will be conducted every two (2) years. If no promotion has been made within the two (2) year period, the examination will be administered in the third (3rd) year, and the list will remain in effect until superseded by a new list.
- g. A promotional examination will be considered valid if at least three (3) applicants pass the exam with a score of seventy (70) or higher.
- h. In the event that fewer than three (3) applicants achieve a minimum passing score, the Chief shall schedule another examination after posting as outlined in letter b above. Eligibility of this second exam will be in accordance with letter (c) above, EXCEPT, in-grade requirements for the position of Captain will be waived.

If another exam is held because fewer than three (3) applicants achieved a score of seventy (70) or above, those applicants who passed the original exam shall have the option of "holding" their examination score and will not be required to take the next written examination. Their score shall remain valid until the next subsequent examination is given. Candidates who choose to "hold" their score shall notify Human Resources in writing at least fourteen (14) calendar days before the date of

the next exam. The candidate electing to "hold" their score on the written examination will then be required to complete all other aspects of the promotional process.

- i. A candidate may appeal a question from the written examination. Such appeal must be made in writing to the Human Resources Director within five (5) business days of the close of the candidate's promotional testing review period. The Human Resources Director will then transmit the appeal to the testing firm. . If there is a question that gets overturned as the result of the appeal process, the following is applied:
 - No correct answer to the question, all candidates receive credit.
 - If multiple answers are correct, only those candidates who answered either correct answer will receive credit.
 - If candidate chose neither correct answer, then no credit allowed.

No questions will be thrown out. The written test will be based upon a 100% score. The candidate shall be advised of the result of the appeal within ten (10) business days of the Town's receipt of an appeal, which decision shall be final.

- j. Examination scores will remain valid until a new examination is administered and results are available.
- k. Candidates who achieve a passing score on the written examination will be eligible to participate in an assessment center, which may include, but not be limited to a fire simulator component. The exercise which comprises the assessment center shall be professionally designed and administered, and an orientation session shall be held to assist candidates in knowing the areas to be assessed. The goal of the assessment center is to evaluate the candidate's knowledge, skills, abilities and personal characteristics that are directly related to the essential functions of the roles of Lieutenant and Captain. The consultants who develop and administer the assessment center will be responsible for the scoring system for the assessment and for establishing the passing score for the assessment center. The dates, times, and locations of the orientation session and assessment center shall be posted conspicuously at all fire stations. The Town will be responsible for the cost of the assessment center.
- l. A candidate may appeal any component of the assessment center. Such appeal must be made in writing to the Human Resources Director, who will transmit such to the firm administering the center, within five (5) business days of the completion of all

components of the assessment center for all candidates. The candidate shall be advised of the result of the appeal within ten (10) business days of the Town's receipt of an appeal, which decision shall be final.

- m. Candidates who achieve a passing score on the assessment center shall be eligible for inclusion on the promotional list. The third component of the promotional process shall consist of an oral interview conducted by a panel selected by the Chief and Human Resources Director. The panel shall include: either the Chief or Deputy Chief, and two (2) current Franklin Fire Department Officers in the rank corresponding to the rank being interviewed for. Such officers shall be compensated in accordance with the collective bargaining agreement for hours spent in the interview process outside of the regular scheduled workweek. The Town shall not be limited in its selection of other members of the interview panel.
- n. The promotional list shall be established based on the following weighted components:
 - (1) Score on the written examination: 45%
 - (2) Score on the assessment center: 40%
 - (3) Oral Interview: 15%

The promotional list shall be established no later than fifteen (15) business days following the completion of the last and third component of the promotional process, oral interview, for all candidates. Each candidate at that time shall be mailed their final scores and ranking. Once established, the list shall remain valid until a new promotional process is administered and a new list is established.

- o. The Fire Chief shall select from the highest three candidates on the list to recommend to the Town Administrator. In the event candidates have the exact same score after applying the weighted criteria, within the top three scores, such tied candidates shall be considered as one candidate for purposes of selecting from the top three candidates eligible for promotion. [For example, if candidates A and B tied with a score of 90, and candidates C and D had scores of 88 and 86, respectively, all four candidates would be eligible for promotion. The same standard would apply for candidates tied with the second highest and third highest scores].

The Fire Chief shall evaluate each candidate's record of service using the following criteria:

- i. Job related experience;
- ii. Performance evaluation in his/her present position (including contributions to the department);
- iii. Attendance record;
- iv. Sick leave record;
- v. Formal education;
- vi. Fire & EMS certification;
- vii. Training and education through career and self-initiated development;

- viii. Disciplinary record of the employee; and
- ix. Work ethic and initiative.

Candidates may submit materials relating to the above criteria for the Fire Chief's review to supplement the Department's personnel record.

- p. Prior to presenting his recommendation, the Fire Chief will notify the eligible candidates of which candidate he intends to recommend. This notification shall include a general statement summarizing his/her recommendation.
- q. Candidates not recommended for promotion may, at their discretion, arrange a meeting with the Fire Chief to review the candidate's performance within the promotional process to identify how the candidate may be more successful in future promotional efforts.

Section 2. Selection.

- a. The decision of the Fire Chief as to which candidate is recommended and the decision of the Town Administrator as to which candidate is appointed shall not be subject to grievance or arbitration.
- b. The parties agree that the Union shall have the right to grieve alleged violations of certain sections of the Promotion Process [sub-sections (a) through (o)] provided that any grievance filed by the Union involving sub-sections (i), (l), (m) and (o) of Section 1 cannot involve the substance of the written exam, assessment center (or oral interview) or the Fire Chief's evaluation of the service record, only the procedures by which they are administered. As to substance, for example, the Union may not grieve any written exam question, or any question or score during the oral interview, or any question or score during the assessment center, or any question asked during the oral interview. As to procedure, for example, if the Town fails to utilize either the Chief or Deputy Chief in the interview panel, that alleged violation would be subject to the grievance procedure. No individual shall have the right to grieve alleged violation of the Procedure.
- c. Union grievances shall be filed at the Town Administrator level within seven (7) calendar days of the Union learning of the act or omission. The Town Administrator shall hear the grievance in an expeditious manner and in no event answer later than seven (7) calendar days after receipt of the grievance.
- d. The promotional process will not be delayed or held in abeyance pending any employee appeal or pending any Union grievance.
- e. Under no circumstances will an arbitrator have the right to order that a particular candidate be promoted or that a promotion decision be rescinded and re-done.

Promotional Examination Timetable

(The below date ranges will be established at notification of the exam)

<u>Step</u> <u>Date</u>	<u>Date Range/Due</u>
Written Examination	180 calendar days from notice of exam
Release of written scores	Shall be contained on notice
Review of written exam	Within 5 business days of receiving exam scores
Appeal of written exam	Within 5 business days after close of review
Response to appeal	Within 10 business days of the Town's receipt of an appeal
Assessment Centers Orientation sessions	_____
Assessment Centers	_____
Appeal of assessment centers	Within 5 business days of completion of centers
Response to appeal	Within 10 business days of the Town's receipt of an appeal
Panel Oral Interview	_____
Establishment of final eligibility list	Within 15 business days of completion of interviews