



Commonwealth of Massachusetts
Municipal Police Training Committee
“Training for Today, Planning for the Future”

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March 20, 2013

TO: Appointing Authorities and Police Department Administrators

FROM: Dan Zivkovich, Executive Director *dz*

SUBJECT: POLICE OFFICER CERTIFICATION

I offer the following reminders regarding the necessary steps you must take before allowing or empowering an officer to exercise police powers within the Commonwealth of Massachusetts. These criteria derive from Massachusetts G.L. c. 6, § 116; G.L. c. 6, § 118; G.L. c. 41, § 96B; and also from the Code of Massachusetts Regulations 550 CMR 3.00 *et. seq.* (Massachusetts Police Officer Training Requirements).

G.L. c. 41, § 96B requires that “every person who receives an appointment to a position on a full-time basis in which he will exercise police powers in the police department of any city or town, shall, prior to exercising police powers, be assigned to and satisfactorily complete a prescribed course of study approved by the [MPTC].” Per 550 CMR 3.03, this course of study is a full-time recruit academy operated or approved by the MPTC. Exemptions to and waivers of this requirement are available in limited circumstances. Ultimate decision-making authority regarding the approval of exemptions or waivers rests solely with the MPTC Committee and not with the MPTC executive director or staff.

G.L. c. 41, § 96B further states that “Failure of an appointed person to comply with the provisions of this section prior to his exercising police powers shall result in the appointed person’s removal by the appointing authority...”

If you are hiring a candidate from out-of-state and are seeking an exemption from the requirement to attend a recruit academy, you must follow the steps below. Exemptions are **only** available to full-time officers. Massachusetts law does **not** authorize the MPTC to grant exemptions for reserve/intermittent officers. If seeking an exemption for an out-of-state candidate:

- The appointing authority must request the exemption and supply appropriate documentation. The form and needed documentation can be found on the MPTC website www.mass.gov/mptc.

- Per 550 CMR 3.03, to qualify for an exemption, the appointed officer must have attended a recruit academy “substantially equivalent to or greater than that of a Massachusetts police officer at a comparable level of experience...” and must have “obtained a minimum of two years of full-time law enforcement experience since completion of the entry-level police academy.” The officer cannot have a break in service exceeding five years.
- If the exemption is granted, the officer then has 90 days to complete the Orientation Training Program.
 - If the Orientation Training Program is not successfully completed within the 90 days, the exemption expires and the officer must attend a full-time recruit academy.
- If the exemption is denied, the officer **must** attend the appropriate recruit training program prior to exercising police powers.

If you are appointing a reserve/intermittent officer (or someone who has only attended a Reserve/Intermittent Basic Training Program) to a full-time position, the reserve officer **must** attend a full-time recruit academy. **No** exemptions are available, except for officers who have already attended a full-time MPTC-authorized academy or a substantially equivalent full-time recruit academy in another jurisdiction. Please see above section for details.

- Per 550 CMR 3.03, if the agency petitions the MPTC Committee and can demonstrate a “documented public safety emergency or other exigent circumstance,” the Committee has the ability to grant the reserve officer a 270-day temporary waiver.
 - To obtain the waiver, the appointing authority must request the waiver and supply appropriate documentation. The form and needed documentation can be found on the MPTC website www.mass.gov/mptc.
 - If the waiver is approved, the officer has 270 days in which to commence attendance at a full-time recruit academy. During this period, the agency can use the officer in a full-time capacity. If the officer does not commence attendance within the 270 days, the waiver expires.
 - The reserve officer **cannot** serve in a full-time capacity unless and until the waiver is approved.
 - To qualify, the officer must:
 - Have successfully completed an MPTC-authorized reserve basic training program; and
 - Have at least one year of law enforcement experience since completing basic training; and
 - Be current with CPR and first aid certifications; and
 - Have achieved a passing score on the MPTC firearms proficiency course within the past 12 months.
 - If the waiver is **not** granted, the officer must attend a full-time recruit academy prior to exercising police powers in a full-time capacity.

If you are hiring a candidate who has no police experience to serve as a full-time police officer, that candidate **must** attend a full-time recruit academy **prior** to exercising police powers. No exemptions or waivers are available.

If you are hiring a candidate who has no police experience to serve as a reserve/intermittent police officer, that candidate **must** attend a reserve/intermittent recruit academy **prior** to exercising police powers. No exemptions or waivers are available.

With respect to professional development (in-service) training and other mandatory training prescribed by statute and the MPTC Committee, the provisions of G.L. c. 41, § 96B state, in part, “Every police officer on a full-time basis in any such municipal police department, shall be assigned to and shall attend a prescribed course of study approved by the municipal police training committee for in-service officers training at such intervals and for such periods as said department may determine. Any such police officer who receives an appointment to a position of higher rank shall, in addition, complete such other courses of supervisory training as said committee may determine.” It goes on to say, “Failure of an appointed person to satisfactorily complete the prescribed course of study may result in his removal by the appointing authority.” In-service training is statutorily mandated and is potentially a condition of employment.

Moreover, a 2001 Massachusetts Supreme Judicial Court case (*Commonwealth v. Vaidulas*, 433 Mass. 247) outlines other potential consequences for officers who are not trained to mandatory standards. In its opinion, the SJC affirms that the absence of training may be used to impeach an officer during trial and that an officer who fails to complete the requisite training satisfactorily is subject to "removal by the appointing authority" per G.L. c. 41, § 96B. The SJC adds that “[t]he Attorney General also may seek removal pursuant to G. L. c. 249, § 9,” which allows civil actions “against a person holding or claiming the right to hold an office or employment” compensated by the state or a municipality. Further, the SJC stated that “Where an individual is harmed by inappropriate, inadequate or negligent training of police officers, the appropriate remedy lies in a direct suit against either the supervising authority or the municipality under the Massachusetts Tort Claims Act or pursuant to 42 U.S.C. § 1983,” the federal law allowing civil actions for violations of civil rights.

Consequently, documentation of training is critical. The MPTC is currently only able to document training that the MPTC provides or hosts. Therefore, if the mandatory training attended by your officers is not conducted by the MPTC (for example, if the training is provided in-house or regionally by another agency), you should ensure that you document the training, making sure to include firearms training (mandatory on an annual basis since 2010) and also any training that meets any “local option” requirements and mandates established by the MPTC Committee from time to time.

There are no deviations or special accommodations for the position of chief of police or commissioner. If a chief of police is expected to exercise police powers, the chief of police **must** meet **all** training requirements as they pertain to any other police officer prior to exercising police powers. This includes meeting recruit officer training standards and professional development (in-service) training standards. Likewise, chiefs of police hired from outside of Massachusetts are also required to either obtain an exemption prior to exercising police powers or attend an MPTC-authorized full-time recruit academy. However, a community may hire an administrative chief of police or commissioner who will **not** be exercising police powers. If the chief of police is strictly an administrator and will **not** be exercising police powers, these training requirements are not applicable.

If you have questions, please feel free to contact me or Marylou Powers, the MPTC Director of Training. Current contact information can be found on the MPTC website: www.mass.gov/mptc.

If you currently have officers exercising police powers who have not met these criteria, as applicable, you should take corrective action immediately. Please contact Director Powers, who can advise you on the steps needed to correct and resolve the issues with the MPTC. In addition, I recommend that you contact your agency's legal advisor to determine if there are any other potential ramifications the issue may have created for the officer, your department, or your community.