

Charter Change Committee
Wednesday, June 12, 2023
Sharon Bushor Conference Room
at City Hall or Remote via Zoom. Burlington, Vermont
DRAFT MINUTES

Members Present: Councilor Bergman (Chair), Councilor Carpenter, Councilor Doherty (remote)

Staff Present: Hayley McClenahan (Assistant City Attorney), Joe Corrow (BPD Detective), Shakuntala Rao (Police Commissioner), Jack Keefe (Police Commissioner), Mary Cox (Police Commissioner, remote), Susan Comerford (Police Commissioner, remote), Eric Dalla Mura (BPD Officer)

Public Present: Josh Kirtlink, Jake Schumann, Jeffrey Jarrad

Meeting called to order at 5:04 PM.

1. Agenda

1.01 Motion to amend/adopt agenda

Motion to Adopt Agenda as is.

Motion by Councilor Doherty, Seconded by Councilor Carpenter

Final Resolution: Motion Passes

Yes: Unanimous

2. Adopt Draft Minutes from 5/1

2.01 Adopt Draft Minutes from 5/1

Motion to Adopt Minutes from May 1, 2024.

Motion by Councilor Carpenter, Seconded by Councilor Bergman

Final Resolution: Motion Passes

Yes: Councilor Doherty abstained due to absence from the given meeting.

3. Public Forum

3.01 Verbal Comments

Jake Schumann submitted a comment to the Committee ahead of the meeting to be included in the agenda and reiterated its main point, being that the proposed charter change language omits appeal language and believes it is an oversight that needs to be addressed.

Public Forum closed at 5:09 PM.

4. Review of Joint Committee Charter Changes

4.01 Review of Joint Committee Charter Changes

The Committee reviewed the Police Commission's Recommendations/Suggestions to the Charter Change Committee on Police Oversight, as compiled and submitted to the Committee by Commissioner Rao:

- Councilor Bergman requested the memo from the Joint Committee's Chairs in December, which summarizes the proposal, be posted with the online agenda of this meeting. The proposal itself was published with the agenda for public viewing.
 - Commissioner Rao explained that the Police Commission's submission is a compilation of input from Police Commissioners, members of the public, and BPOA, gathered between January 2024 and now, and that the document was reviewed by all stakeholders prior to submittal.
1. Retaining Commission's Appellate Authority
 - a. Commissioner Keefe stated the current language is ambiguous in whether or not it serves to set up an independent body that has ultimate authority, adding the purpose of the charter change seems unclear, citing Resolution 7.09 as the guiding resolution on addressing this issue. 'Resolution 7.09' was introduced to the City Council on October 18, 2021 but was not referred to the Joint Committee on Police Oversight.
 - b. Commissioners Rao, Cox, and Garrison voiced support for retaining the Commission's appellate authority. Commissioner Rao added removing the Commission's appellate authority conflicts with other duties and powers afforded the Commission by the charter, and urged the Committee to reinstate it.
 2. Use of a Complaints Monitor to Help Commission with Administrative Work on All Complaints...Commission Retains the Responsibility of Reviewing Complaints
 - a. On behalf of Commissioner Hanson, Commissioner Rao summarized Commissioner Hanson's agreement with removing the responsibility of independent investigations from the Police Commission, but takes issue with this responsibility moving to the independent body instead, due to similar limitations in resources as the Police Commission. Commissioner Rao also emphasized the importance of BPD's transparency in how it ensures impartiality in investigations, and noted that Commissioner Keefe expressed the Police Commission should still retain investigation authority for extraordinary cases.
 3. General Questions/Suggestions for the Joint Committee City Council

- a. Commissioner Rao emphasized Commissioner Hanson's points, being to ensure the investigation process has a clear timeline, supportive of Detective Corrow's concerns about the stress placed on officers during this process and disagreement over the mayor's involvement in disciplinary action, and the need for the Commission to be non-political.
- b. Commissioner Cox added the Police Commission does not want to do investigations, stating it is not an appropriate function for the Commission to have when it is intended to be the bridge between BPD and the community, aside from the lack of bandwidth, but expressed support for the idea of an independent panel, to which matters could be referred to by the Police Commission as appropriate. Commissioner Cox explained the current internal policy says the Police Commission can send appropriate matters to the Mayor, but this conflicts with the authority granted the Commission through the charter, so an independent panel for this process would make more sense. Commissioner Cox also added the need to ensure the panel is a non-political body, such as the Mayor nominating members to the panel instead of appointing, on which the City Council could vote.
- c. Detective Corrow confirmed the concerns from BPOA's perspective are reflected accurately in Commissioner Rao's document, especially as it relates to a fixed timeline for investigations and resolving disciplinary matters.

The Committee deliberated on the proposed charter changes, as adopted by the Joint Committee on Police Oversight that had been put forward for public hearing but redirected by City Council to the Police Commission for comment and then sent to the Charter Change Committee:

- The Committee agreed to do a walk-through of the proposed charter change, using the document provided by Commissioner Rao as an outline and address each concern, with the option for additional points to be raised as needed and allowing the Committee to review the whole document.
- Commissioner Keefe noted one issue was left out of Commissioner Rao's document concerning threshold issues, which was raised in a memo sent to Charter Change Committee in January 2024. Councilor Bergman advised Commissioner Keefe to resend it to the Committee's and City Attorney's Office's attention ahead of the next meeting on June 18.

1. Section 190(a) Lines 97-101

- a. Councilor Doherty understood the reason for removing the language authorizing the Police Commission to function as an appellate body was due to concerns with that function conflicting with the new role afforded through the proposed charter change, though as it seems most Police Commissioners and BPOA are in favor of the Police Commission retaining this function, supports adding that language back in.

- b. Councilor Carpenter stated she would support the Police Commission retaining that authority with the added layer that an independent panel review serious offenses or offenses for which the Police Commission does not have the capacity to review.
 - c. While in support of reinstating appellate authority to the Police Commission, Councilor Bergman distinguished that the language was struck due to concerns of sufficient due process rather than conflict of interest, as it is unclear whether it is appropriate for the Police Commission to act as an appellate body for a case it has prior knowledge of through executive sessions or other meetings with the Chief, based on the current grievance process. Councilor Bergman asked for clarification on the legalities of that dynamic from the City Attorney's Office and BPOA's or Police Commission's counsel if they had thoughts on it, and also asked Detective Corrow to follow up on what qualifies a case for the grievance process. Councilor Carpenter conferred it did not seem like a conflict of interest issue. Councilor Doherty noted the question of sufficient or insufficient due process could be a legally gray area, for which the City may have to develop policy.
 - d. Commissioner Rao agreed due process has been a concern for some of the Commissioners hearing cases. Commissioner Cox acknowledged it is a gray area but has generally felt confident in her ability to be fair in making a decision.
2. Complaint Monitor and Investigation Authority
- a. The Committee discussed if a monitor or other staffperson should be explicit in the charter, requesting the City Attorney's Office to draft language and weigh in on whether support staff are implicit to the structure of the charter.
 - b. Attorney McClenahan offered that a middle ground approach could be to add to the charter that a city official or some other city body is responsible for the designation and regulation of this role, which Councilor Bergman requested be drafted as an option for the Committee to review.
 - c. Commissioner Keefe clarified that the monitor would advise the Commission on best practices and other administrative support functions, in addition to monitoring complaints, but given the City's fiscal state, would be willing to deprioritize the need for a monitor at present. Commissioner Keefe added successful oversight bodies require adequate support and resources from the community and administration, and that therefore, the charter should provide that the City set through ordinance funding for its oversight methods by whatever mechanisms it can.
 - d. Councilor Bergman added the charter does provide some authority to the Police Commission to monitor and hire to carry out monitoring duties, but

Commissioner Rao disagreed with the idea that Police Commissioners are in a position to realistically hire and supervise, given current resources and the backlog of complaints. Councilor Bergman clarified the proposed language does not mandate the Police Commission hire a monitor but merely provides the authority to do so.

- e. Commissioner Cox voiced that giving the Commission authority to conduct investigations, independent of internal investigations, is a step in the wrong direction.
 - f. Commissioner Comerford emphasized that it would be in the Commission's best interest to have language in the charter that broadens its powers and allows the Commission discretion in exercising them.
 - g. The Committee decided to retain the language regarding independent investigations.
3. Criminal Justice Council and Duty to Report
- a. Councilor Bergman suggested adding "and relevant State statutes" to the end of Line 63.
4. Section 184(d)
- a. Commissioner Keefe asked for clarification on the finality of a disposition, distinction between higher level offenses and lesser, and if the Commission's authority, in respect to the first two issues, are limited to higher level offenses. Commissioner Keefe clarified the Police Department investigates every complaint, but the classification level for each complaint is set by Department Directive 40 (DD40), which was then integrated into the policy guiding the complaints process, parts of which have no real legal basis from Commissioner Keefe's perspective and should be reworked. Detective Corrow shared that DD40 is currently being revised, and that the Police Commission is anticipated to vote on it in July. Councilor Bergman asked the Commissioners to forward the publicly available latest draft to the Committee to reference with the proposed charter change.
 - b. Councilor Carpenter asked how Department Directives are adopted and revised. Commissioner Keefe explained the Department Directives are drafted by the Chief, and per the charter, are approved by the Police Commission. Councilor Bergman added the Commission, the Chief, or the City Council can initiate the process to change a Department Directive, the procedure for which is set by DD01.
5. Composition of the Panel

- a. Councilor Doherty recalled that BPOA once suggested the independent panel be increased from 3 members to 5 members, where 3 members are appointed by the mayor and the last 2 are each appointed by BPOA and the Police Commission, and more stringent requirements for members to have law enforcement or HR experience.
 - b. Councilor Carpenter wondered if the number of members should be expanded in terms of qualifying individuals approved to sit on the panel, in the event that an appointed member is away at the time the panel is called to meet for a hearing, since the panel would be meeting so irregularly and infrequently, and believes it would be challenging to have 3 or 5 fixed members who could be reliably organized on such short notice, adding 5 would be much harder than 3.
 - c. Councilor Bergman noted Commissioner Cox advocated for a fixed panel. Councilor Bergman also expressed concern with the board's independence if the BPOA appointed a member to the panel, but does not have strong feelings about the Police Commission appointing a member or the experience criteria currently proposed in the charter change.
 - d. Detective Corrow disagreed that a panel solely appointed by the Mayor can be independent and emphasized that outlining specific experience requirements, including experience in municipal government and matters would ensure the panel has the education it needs to make unbiased decisions. Detective Corrow offered to prepare relevant draft language with BPOA counsel to present at the Committee's next meeting.
 - e. Councilor Doherty emphasized that whether the panel is ad hoc or fixed, the use of the panel is intended to be irregular and has to have confidence of the community and the Burlington Police Department in order to work, and given BPOA's engagement with the Committee through the charter change, thinks the request that the panel not be entirely mayoral is reasonable.
6. Investigation Timeline
- a. Councilor Bergman clarified the charter only provides that notice of a hearing be given when the decision is over 14 days, and any existing timelines for the grievance process are set by the BPOA contract. Detective Corrow added there is a directive that internal investigations have a timeline as well, and so believes the language in the charter should mandate that a timeline be set via ordinance. The Committee agreed to make that change and asked that BPOA's counsel and the City Attorney's Office identify the best place(s) to insert the draft language.

7. Section 185(a) Lines 79-80

- a. Councilor Doherty asked for clarification on the origin of the language regarding the Chief of Police being subject to the Mayor's authority as Chief Executive

Officer and ordinances and orders passed by City Council. Councilor Bergman said the previous Mayor requested it be added for consistency with other departments' processes. Councilor Doherty requested that the Committee revisit this change at their next meeting and asked the City Attorney's Office to provide further guidance on it. Attorney McClenahan agreed to look into the language more because on first reading, it seems to run contrary to how the City would typically interpret State law with respect to ordinances and executive orders.

- b. Detective Corrow said the BPOA takes issue with the Mayor having power over the Chief in final decisions, as this could potentially compromise the Chief's ability to run the Department in the best interests of the community and its officers. Councilor Carpenter said there still needs to be a link to the Mayor's Office because the Mayor is elected to run the City, inclusive of the Police Department. Councilor Bergman requested the City Attorney's Office reach out to the Mayor's Office to obtain the current Administration's opinion on the language for this portion of the charter.

5. Any Other Committee Business

6.01 Any Other Committee Business

Councilor Bergman said the aim of the next meeting would be to make decisions on the proposed charter language based on the information and draft language requests made and presented to the Committee for the next meeting.

Attorney McClenahan stated she would clarify with the Clerk-Treasurer's Office when the Committee needs to have the charter change ready for City Council in time to be placed on the ballot in November.

The Committee's next meetings were set for June 18 at 5:00 PM and June 25 at 7:30 PM.

6. Adjournment

6.01 Adjournment

Motion to Adjourn.

Motion by Councilor Carpenter, Seconded by Councilor Bergman

Final Resolution: Motion Passes

Yes: Unanimous

The meeting was adjourned at 7:43 PM.