



**Tuesday, June 18, 2024, 5:00 PM, 645 Pine Street DPW Front Conference Room or
REMOTE via Zoom**

When: Jun 18, 2024 05:00 PM Eastern Time (US and Canada)
Topic: Charter Change Committee Meeting

Please click the link below to join the webinar:

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Or One tap mobile :

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+1 360 209 5623 US

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1. Agenda

Subject	1.1. Motion to amend/adopt agenda
Meeting	June 18, 2024 - Charter Change Committee Meeting - Tuesday, June 18, 2024, 5:00 PM, 645 Pine Street DPW Front Conference Room or REMOTE via Zoom
Category	1. Agenda
Department	
Type	
Recommended Action	

2. Adopt Draft Minutes from June 12th

Subject	2.1. Adopt Draft Minutes from June 12th
Meeting	June 18, 2024 - Charter Change Committee Meeting - Tuesday, June 18, 2024, 5:00 PM, 645 Pine Street DPW Front Conference Room or REMOTE via Zoom
Category	2. Adopt Draft Minutes from June 12th
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Verbal Comments
Meeting	June 18, 2024 - Charter Change Committee Meeting - Tuesday, June 18, 2024, 5:00 PM, 645 Pine Street DPW Front Conference Room or REMOTE via Zoom
Category	3. Public Forum
Department	Council and Board
Type	

4. Discussion of the Joint Committee's Proposed Charter Changes

Subject	4.1. Discussion of the Joint Committee's Proposed Charter Changes
Meeting	June 18, 2024 - Charter Change Committee Meeting - Tuesday, June 18, 2024, 5:00 PM, 645 Pine Street DPW Front Conference Room or REMOTE via Zoom
Category	4. Discussion of the Joint Committee's Proposed Charter Changes
Department	Council and Board
Type	
Recommended Action	

5. Any Other Committee Business

Subject	5.1. Any Other Committee Business
Meeting	June 18, 2024 - Charter Change Committee Meeting - Tuesday, June 18, 2024, 5:00 PM, 645 Pine Street DPW Front Conference Room or REMOTE via Zoom
Category	5. Any Other Committee Business
Department	Council and Board
Type	
Recommended Action	

6. Adjournment

Subject	6.1. Motion to adjourn
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Meeting June 18, 2024 - Charter Change Committee Meeting - Tuesday, June 18, 2024, 5:00 PM, 645 Pine Street DPW Front Conference Room or REMOTE via Zoom

Category 6. Adjournment

Department Council and Board

Type

Recommended Action

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.

Resolution Relating to

MARCH 5, 2024 ANNUAL CITY MEETING--PROPOSED
CHARTER CHANGE RE POLICING

RESOLUTION 8.3

Sponsor(s): Joint Charter and
Ordinance Committee
Introduced: 12/11/23
Referred to: _____
Action: adopted
Date: 12/11/23
Signed by Mayor 12/18/23

CITY OF BURLINGTON

In the year Two Thousand Twenty-Three

Resolved by the City Council of the City of Burlington, as follows:

1 That WHEREAS, over the past several years, as part of its continued commitment to oversight and
2 accountability, the City Council and the Administration have continued to take steps to revise Burlington’s
3 police oversight, transparency, and accountability practices; and

4 WHEREAS, pursuant to a resolution adopted by the Council on February 6, 2023, the City Council
5 requested the Ordinance Committee and Charter Change Committee to hold joint meetings, allowing for
6 community and stakeholder input on the disciplinary authority of the Chief of Police, the oversight role of the
7 Police Commission, and the creation of a separate community oversight body independent from the
8 Burlington Police Department; and

9 WHEREAS, over a span of eight months, the Joint Ordinance and Charter Change Committee met
10 fourteen times, seeking and receiving community and stakeholder input on the issues; and

11 WHEREAS, the Joint Committee voted to move forward a proposed charter change for public
12 comment with the understanding it may be placed upon the ballot after a final vote of the Burlington City
13 Council; and

14 WHEREAS, in accordance with 17 V.S.A. § 2645, two public hearings shall be held on a proposed
15 amendment of the Burlington City Charter prior to it being placed upon the ballot of the Annual City Meeting;

16 NOW, THEREFORE, BE IT RESOLVED that the City Council moves forward for the public’s
17 consideration the proposed amendment to the Burlington City Charter, and asks that the City Clerk set public
18 hearings on the proposed in accordance with 17 V.S.A. § 2645 on whether the Charter of the City of
19 Burlington, Acts of 1949, No. 298 as amended be further amended to amend Article 62, Police Department;
20 Article 63, Chief of Police and Captain; and Article 65, Removal or Suspension, thereto to read as follows:

ARTICLE 62. POLICE DEPARTMENT

183 Board of Police commissioners; composition; terms.

* * * * *

DISTRIBUTION:

I hereby certify that this resolution has been sent to the following department(s) on

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RESOLUTION RELATING TO

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Adopted by the City Council

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..... Clerk

Approved....., 20

..... Mayor

Vol. Page

Attest:

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23 The Board of Police Commissioners shall consist of seven legal voters and should represent the diverse nature of said
24 City's constituents, including those from historically marginalized communities, to be appointed by the City Council
25 with Mayor presiding to serve for three years and until their successors are appointed and qualified.

26 **184 Same-powers and duties.**

27 (a) The City Council shall make rules and regulations for the government of the entire pPolice foree Department
28 and shall fix the qualifications of applicants for positions and service on said foree Department and, to the extent
29 permitted by applicable law, the Chief of Police shall furnish the City Council with any information they may require
30 concerning the finances of the Police Department. The Chief of Police shall be responsible for all expenditures made
31 by the Police Department and no expenditures shall be made by the Department except in conformity with the
32 standards promulgated by the City Council.

33 (b) The Board of Police Commissioners shall have such authority and responsibility relating to the management,
34 auditing, or monitoring of the Police Department, its services, and facilities as may be delegated from time to time by
35 resolution- the ordinances and orders of the City Council. Said Board shall notify the Mayor and the Chief
36 Administrative Officer, in writing, of any and all changes, modifications, or additions to the rules and regulations of
37 the Department.

38
39 (c) Without limitation to the foregoing, the Board of Police Commissioners and the Chief of Police may propose
40 rules and regulations for the government of the entire Police Department in a manner not inconsistent with those
41 established by the City Council. Adoption of such proposed rules and regulations requires joint approval by the
42 Board of Police Commissioners and the Chief of Police. In the event joint approval is not provided by the Board of
43 Police Commissioners and the Chief of Police, either party may bring forward to the City Council the proposed rule
44 or regulation for the City Council's consideration.

45
46 (d) The Board of Police Commissioners shall have the authority to receive and review all civilian and internal
47 allegations of misconduct by members of the Police Department. To the greatest extent permitted by law, the Chief
48 of Police shall provide the Board of Police Commissioners timely updates of any review, investigation, or disposition
49 of alleged misconduct, and the Board of Police Commissioners shall have the ability to request additional information
50 from the Chief of Police and access to all documents or other evidence relied upon by the Chief of Police in
51 reviewing allegations of misconduct. For higher level complaints of alleged misconduct, the complaint may not be
52 disposed until the Board of Police Commissioners is notified of the proposed disposition.

53
54 After receiving notice from the Chief of Police of the recommended or actual disposition relating to the review of
55 alleged misconduct, the Board of Police Commissioners shall have the authority to:

- 56 (i) recommend an alternative disposition to the Chief of Police within a time established by ordinance; or
57 (ii) independently investigate any allegation of misconduct by members of the Police Department upon a 2/3
58 majority vote. Such investigation or review shall be conducted by an independent investigator hired by the
59 Board of Police Commissioners, and approved by the City Attorney's Office, and completed within a time
60 established by ordinance. Upon the conclusion of such an investigation, the Board of Police Commissioners
61 may make a recommendation per subsection (i). The Board of Police Commissioners shall not have the authority
62 to investigate or impose discipline upon the Chief of Police. Matters regarding the alleged misconduct of the
63 Chief of Police shall be addressed in conformity with section 190(b) of this Charter.

64 (e) Upon receiving a recommendation by the Board of Police Commissioners in subsection (d), the Chief of
65 Police may accept the recommendation subject to the notice and hearing provisions in Article 62, section 190(a) or
66 reject the recommendation. In the event the Chief of Police rejects the recommendation, the Chief of Police shall

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RESOLUTION RELATING TO
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Adopted by the City Council

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Clerk

Approved....., 20

Mayor

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67 immediately the notify Board of Police Commissioners. Upon receiving notice of the rejection, the Board of Police
68 Commissions may, upon a 2/3 majority vote, request that an independent panel decide the disposition of the matter,
69 subject to the notice and hearing provisions set forth in in Article 62, section 190(a).
70

71 This independent panel shall consist of three (3) persons appointed on a case by case basis by the Mayor.
72 Members of the independent panel shall include at least two persons with experience in law enforcement, human
73 resources or labor and employment law, or other similar experience, and one member from the general public.
74

75 **ARTICLE 63. CHIEF OF POLICE AND CAPTAIN**

76 **185 Officers of pPolice ~~foree-Department~~ designated.**

77 (a) The direction and control of the entire pPolice ~~foree Department~~, except as herein otherwise provided, shall be
78 vested in a police officer who shall be called the Chief of Police, and such other ranking police officers as the City
79 Council shall authorize, subject to the authority of the mayor as chief executive officer and the ordinances and orders
80 of the City Council. The order of rank and succession within the Police Department shall be as designated by the
81 City Council by regulation.

82 (b) Except as herein otherwise provided, such officers shall have the powers and duties granted to police officers by
83 Vermont law and assigned to them by regulations adopted under section 184 of this Charter.

84
85 **ARTICLE 65. REMOVAL OR SUSPENSION**

86 **190 Chief of Police may remove member for cause; hearing.**

87 (a) Whenever it shall appear to the Chief of Police that any member of said ~~foree Police Department~~ has become
88 incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty,
89 or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or
90 charges to such effect are made in writing to the Chief of Police by a responsible person against such member, the
91 Chief of Police may investigate and, after appropriate notice and hearing, dismiss such member from the ~~foree Police~~
92 Department, order a demotion in rank, or suspend the member without pay for a specified time period in excess of 14
93 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the Chief of Police's
94 notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the
95 charges being considered. In connection therewith, the Chief of Police shall have the power to subpoena documents
96 and witnesses and to administer the oath to such witnesses. Such a subpoena will be subject to enforcement or
97 modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b. The Board of Police
98 Commissioners shall hear any appeal filed in a timely manner with respect to such actions of the Police Chief. The
99 time of filing an appeal and the nature of the appellate process shall be as determined by such Board of Regulation.
100 Following its consideration of any such appeal, the Board may affirm, modify, or vacate the decision made by the
101 Chief of Police.

102 (b) Whenever it shall appear to the Mayor that the Chief has become incompetent, inefficient, or incapable from any
103 cause, or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private
104 or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the Mayor

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ORIGINAL

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RESOLUTION RELATING TO

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DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

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Adopted by the City Council

....., 20

..... Clerk

Approved....., 20

Attest:

..... Mayor

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105 by a responsible person, the Mayor may suspend the Chief of Police from duty pending a hearing thereon by the City
106 Council. The City Council shall forthwith notify the Chief of Police of the charges preferred by them, or of the
107 complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and
108 investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made, shall
109 give the Chief of Police reasonable notice of the same, not less than 48 hours, and the City Council shall have the
110 power to subpoena documents and witnesses and to administer the oath to such witnesses. Such a subpoena will be
111 subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b.

112 (c) If, upon hearing, the City Council shall find such complaints or charges to be well founded, it may dismiss the
113 Chief of Police from the ~~foree~~ Police Department, demote him or her in rank, or suspend him or her without pay for a
114 period not to exceed 60 days. The procedures outlined in this section shall control in the event of any conflict with
115 section 129 of this charter as pertains to the removal of the Chief of Police.

116 (d) The Chief of Police may, without notice or hearing for any infraction, violation, or disobedience of any of the
117 rules and regulations of the Police Department that may seem to the Chief of Police sufficient, suspend from duty
118 without pay any member of the Police ~~foree~~ Department for a period not to exceed 14 days.

119
120 BE IT FURTHER RESOLVED that after the public hearings and any revisions to the language, the
121 City Council may take a vote that the proposed amendment be placed on the ballot of the Annual City Meeting
122 to be held on March 5, 2024.

123

124

125 *Material underlined added

126 **Material stricken out deleted

127

128

129 KS/Resolutions 2023/ March 5, 2024 Annual City Meeting Proposed Charter Change re Policing

130 12/8/23

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RESOLUTION RELATING TO

March 5, 2024 Annual City Meeting--Proposed Charter Change Re Policing

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Adopted by the City Council

December 11, 20 23

 Clerk

Approved December 18, 20 23

Attest:

..... Mayor

Vol. Page

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Recommendations/Suggestions to the Charter Change Committee on Police Oversight by Burlington Police Commissioners

Prepared and Collated by: Shakuntala Rao, Chair

1. Retaining Commission's appellate authority

Quoted from Commissioner Keefe: "Section 190 (a). Regarding the proposed deletion of the Commission's appellate authority, it should be kept in mind that when Resolution 7.09 was approved, it was contemplated that the Commission might serve as the independent disciplinary body and its appellate functions would raise due process concerns. These concerns no longer appear relevant.

It is now clear that the Commission will not function as the independent body as reflected in the proposed language contained in 185 (e). Notably, Det. Corrow confirmed that the BPOA explicitly negotiated to retain the Commission as the appeals body to hear officer's grievances against discipline handed down by the Chief in the terms of the last contract it negotiated with the city. He explained that the BPOA believed the Commission's hearing of grievances provided officers with an effective and efficient remedy. This was after the Commission began to review complaints of officer misconduct under the Complaint Policy the Commission approved in August 2020. Additionally, the Commission's independent legal counsel also conducted analysis and identified precedent indicating that the Commission's appellate function in hearing officers' grievances does not compromise due process.

It is also noted that Section 184 (d) provides that the Commission shall have the authority to receive and review all civilian and internal allegations of misconduct by members of the Police Department. Officer's grievances against discipline often arise from internal allegations of misconduct. Commission's hearing of these grievances is an important review function that, like reviewing civilian complaints of police misconduct, strengthens the Commission' monitoring role, helping to improve police performance and public safety. The adage "if it's not broke don't fix it" applies and it is recommended that amendments to the Charter do not eliminate the Commission's duty to hear officer's grievances."

Commissioner Rao, Cox and Garrison agree that the appellate authority of the Commission ought to be retained.

2. Use of a complaints monitor to help Commission with administrative work on all complaints (essentially the role of Commissioner Keefe); Commission retains the responsibilities of reviewing complaints.

Quote from Commissioner Hanson: "The charter change proposes that the independent panel would have the power to conduct an independent investigation. This change was

made to reflect that the police commission does not want to have this power and I agree. The Commission is an all-volunteer board and does not have the resources and background to hire and supervise an independent investigator. This is just as likely to be true of the independent panel. In order to decide if another investigator is necessary, the charter change committee needs to first understand what currently exists to investigate wrongdoing and I do not think this has been thoroughly explored. There are two areas that need to be reviewed and understood: I would like to review the department's internal affairs investigation policy and I am unable to find a directive about that on the BPD website of key directives. In order to develop transparency and trust, it is important for the public to understand how the department ensures how the investigation it undertakes is impartial and independent. It should explain when another agency will be asked to conduct an investigation and how the commission can request additional follow-up as needed."

Or

3. **Quoted from Commissioner Keefe: "Section 184 (d) (ii).** Regarding the Commission's authority to conduct investigations, Councilor Bergman clarified the Commission is not required to conduct investigations, just that it is authorized to do so. Councilor Travers likened the authority to "break glass in case of emergency." I believe providing the Commission with authority to respond to extraordinary events strengthens the Commission's oversight functions and could be effectively exercised by the Commission with guidance from the City Attorney's office and the Commission's independent counsel.

Additionally, Vermont state statute in Title 20: Internal Security and Public Safety Chapter 151: Vermont Criminal Justice Council § 2403. Law enforcement agencies; duty to report provides that:

"(a)(1) The executive officer of a law enforcement agency or the chair of the agency's civilian review board shall report to the Council within 10 business days if any of the following occur in regard to a law enforcement officer of the agency: ... (B) Category B. (i) The agency receives a credible complaint against the officer that alleges that the officer committed Category B conduct."

This includes allegations of Category B misconduct alleged against the Chief. The duty to report misconduct to the Vermont Criminal Justice Council is mandated by statute and does not provide discretion to the Commission. As such, it is recommended that the amendments contain language to the effect that matters of alleged misconduct of the Chief be addressed in conformity with Section 190 (b) of this Charter and relevant Vermont state statutes."

General Questions/Suggestions for the Joint Committee City Council.

1. **Commissioner Keefe: Section 184 (d).** The purpose and effect of the provision that higher level complaints may not be disposed until the Commission is notified of the proposed disposition is not apparent. Does this mean that the Chief's disposition is not final unless the Commission agrees? Or if it does not, final disposition of the complaint rests with the independent body? It appears the answers to these questions depend on clarifying the powers and duties of the independent panel in disciplining officers.
2. **Commissioner Hanson:** The charter change encourages appointing members of historically-marginalized communities to better reflect the diversity of our community which is a great and important step. The charter change should also speak to the need for the commission to be non-political. As I understand it the city council tries to have geographic diversity, should the charter change encourage this? Some cities have provisions that police commissioners should not hold any political position, have lived in the community for a certain number of years or be a certain age for example.
3. **Commissioner Hanson:** Having a timeline for when the process will be resolved is important because Detective Corrow expressed concern about the stress that this places on officers. He also expressed that the officers would like the independent panel, if this idea moves forward, to have more than 3 people. He suggested 5 and that they be required to have at least 10 years experience for the LE members and 5 years for the HR representative. He also commented that officers did not think it was appropriate for the mayor to play a role in discipline, that is the chief's role, and could inject politics in the process. It is important that officers feel that any changes to the system provide fairness so that we do not adversely affect the department's critical recruitment efforts.
4. **Commissioner Cox:** The review panel would be a professional panel consisting of 3 members. Two of the members would be current or former police officers with a minimum of ten years policing experience. The third member would be an individual with professional experience in diversity, equity, and inclusion work and/or mental health policy or direct services. This panel would be appointed by [whom? Mayor, City Council?] for fixed terms of ?? years and members could only be removed for cause, as determined by [mayor, city council?]. Panel members would be entitled to per diem compensation for all hours worked in investigating complaints and reviewing discipline. The Panel would have subpoena power and an ample budget to retain investigators. Panel members need not be Burlington residents. Appropriate experience and temperament are more important. Would the Police Commission would be responsible for working with the Department to make any changes to Department policy or procedure suggested [mandated?] by the Special Panel."

Response from Detective Corrow (as representing BPOA) at the Commission:

General agreement with the suggestions being made by various Commissioners. Added comments were:

1. The review panel is to consist of 5 members with at least one with experience in labor/management issues; and
2. To include a fixed and quick timeline for resolution/decision regarding any disciplinary matters.

To: Burlington City Council

From: Councilor Ben Traverse, Chair of the Ordinance Committee
Councilor Gene Bergman, Chair of the Charter Change Committee

Date: December 7, 2023

Re: Joint Committee Proposal

The joint committee on police oversight forwarded a proposed charter change for consideration by the full City Council. The question before the Council at its meeting on December 11 will be whether to warn this item for a public hearing to place this proposal on the Town Meeting Day ballot.

The following is a summary of the proposal before the City Council:

- Section 184 –
 - **Size of Commission** – The joint committee considered increasing the size of the Police Commission to nine members but ultimately settled on a proposal that keeps the existing seven-member Commission. This was supported by members of the Commission and the Mayor’s Office.
 - **Diversity of Commission** – The proposal adds language requiring that the Police Commission be representative of Burlington’s diverse communities, including those that have been historically marginalized.
- Section 185 –
 - Subsection (a) – **Information to City Council** – the existing charter provides that the Chief of Police is only obligated to furnish the City Council with information regarding the “finances” of the Police Department. In practice, the Chief of Police regularly provides the Council with more expansive information and the joint committee has proposed language that aligns with this existing practice. The Chief of Police and the Burlington Police Officers Association (BPOA) expressed a desire that the proposed language include additional parameters for information that is legally protected from disclosure. As noted below, the joint committee has invited suggested edits.
 - Subsections (b) and (c) – **Auditing and Monitoring, and Rulemaking** – in practice, the Police Commission regularly exercises auditing and monitoring functions over the Police Department. Additionally, to make amendments to or promulgate new rules or regulations at the departmental or Commission level, existing practice requires that these directives be mutually approved by both bodies. The joint committee has proposed language that reflects this practice and reaffirms the City Council’s role in potentially resolving any disagreement over rulemaking.

- Subsection (d) – **Complaint Review and Investigations**
 - First, the proposed language of this subsection reflects an existing practice where the Chief of Police regularly provides the Police Commission with notice of and updates on their review of complaints of alleged misconduct by a member of the Police Department. For higher-level complaints, such as those involving alleged use of force, the proposed language affirms that the Chief of Police may not dispose of the complaint until they have notified the Police Commission of any recommended disposition.
 - Second, the proposed language provides that in the course of receiving notice and updates of complaints of misconduct, the Police Commission may provide feedback to the Chief of Police and request that the Chief furnish the Commission with any documents related to their review of a complaint.
 - Third, the joint committee has proposed language affirming that once the Chief of Police has disposed of a complaint, the Police Commission may make a recommendation on an alternative disposition.
 - Additionally, a majority of the joint committee supported language that would allow the Police Commission, by a two-thirds vote, to hire a third party approved by the City Attorney’s Office to conduct an independent review or investigation of a complaint. The joint committee discussed whether the charter should provide this third party subpoena authority and a majority of the committee declined to extend that authority. The City Council would be able to establish time limitations for any review or investigation, and at the conclusion of that process, the Police Commission may exercise its authority to make a recommendation on an alternative disposition of a complaint. Some members of the Police Commission provided public testimony indicating disagreement with their assuming an expanded investigatory role. Members of the joint committee asked that the Police Commission act as a body to please provide the City Council additional feedback on this issue.

- Subsection (e) – **Complaint Resolution** – if a recommendation from the Police Commission differs from that of the Chief of Police, the Chief may either accept or reject the Commission’s recommendation. If the Chief rejects the Commission’s recommendation, the Police Commission may, by a two-thirds vote, elevate the dispute to an independent three-member panel for resolution. This panel will be appointed by the Mayor for the sole purpose of resolving the elevated dispute. A majority of the panel must consist of members with experience in law enforcement, human resources, labor and employment law, or other similar experience. Representatives from the BPOA expressed a desire for further clarification on these eligibility criteria. As noted below, the joint committee has invited the BPOA to provide suggested edits.

- Section 185
 - At the request of the Mayor’s Office, the joint committee has included language that the Chief’s direction and control of the Police Department be “subject to the authority of the mayor as chief executive officer and the ordinance and orders of the city council.” This language is the same as that which applies to the Mayor’s authority over other City department heads. The Chief of Police and BPOA provided public comment on this change and noted, among other concerns, that Section 191 of the charter expressly creates a disconnect between members of the Police Department and political activities. After receiving this testimony, members of the joint committee asked that the Mayor please confirm their position on the proposed language.

- Section 190
 - Subsection (a) – **Appeal Process** – the joint committee proposes the removal of language requiring that disciplinary appeals be presented to the Police Commission. This proposal is intended to remove any due process concerns related to the Commission exercising appellate authority over a matter it was previously involved in. By removing this language, the appellate process for unionized members of the Police Department will be the subject of collective bargaining and the process for non-unionized members will be controlled by the City’s ordinances and personnel policies. The Chief of Police and BPOA expressed that unionized members of the Police Department have been historically incentivized to advance into leadership ranks with the commitment that they will remain subject to the same appellate practices established by their collective bargaining agreement. Members of the joint committee verbally expressed support for this practice to continue.

The following is a summary of the four areas where the joint committee has specifically asked for additional feedback:

1. For Section 184(a), members of the joint committee invited any suggested language that further defines parameters for information the Chief of Police must furnish to the City Council.
2. For Section 184(d), members of the joint committee requested formal feedback from the Police Commission on whether its current membership is supportive of the proposal that they be permitted to hire a third party to conduct an independent review or investigation of any complaint.
3. For Section 184(e), members of the joint committee invited any suggested language that further defines eligibility criteria for the members of the independent complaint resolution panel.
4. For Section 185, given additional feedback from the Chief of Police and BPOA on the proposed language, members of the joint committee asked that the Mayor’s Office confirm its position on this proposal.

Resolution Relating to

RESOLUTION _____

CHANGES TO CITY CHARTER ARTICLES 62, 63, AND 65
REGARDING POLICE OVERSIGHT

Sponsor(s): Charter Change
Committee
Introduced: _____
Referred to: _____

Action: _____
Date: _____
Signed by Mayor: _____

CITY OF BURLINGTON

In the year Two Thousand Twenty-Four.....

Resolved by the City Council of the City of Burlington, as follows:

1 That WHEREAS,
2 WHEREAS,
3 NOW, THEREFORE, BE IT RESOLVED

ARTICLE 62. POLICE DEPARTMENT

183 Board of police commissioners; composition; terms.

The Board of Police Commissioners shall consist of seven (7) legal voters and should represent the diverse nature of said City's constituents, including those from historically marginalized communities, to be appointed by the City Council with mayor presiding to serve for three (3) years and until their successors are appointed and qualified.

184 Same-powers and duties.

(a) The City Council shall make rules and regulations for the government of the entire Police force Department and shall fix the qualifications of applicants for positions and service on said force Department and, to the extent permitted by applicable law, the Chief of Police shall furnish the city council with any information they may require concerning the finances of the Police Department. The Chief of Police shall be responsible for all expenditures made by the police department and no expenditures shall be made by the department except in conformity with the standards promulgated by the City Council.

(b) The Board of Police Commissioners shall have such authority and responsibility relating to the management, auditing, or monitoring of the Police Department, its services and facilities, as may be delegated from time to time by resolution the ordinances and orders of the City Council. Said board shall notify the mayor and the chief administrative officer, in writing, of any and all changes, modifications or additions to the rules and regulations of the department.

(c) Without limitation to the foregoing, the Board of Police Commissioners and the Chief of Police may propose rules and regulations for the government of the entire Police Department in a manner not inconsistent with those established by the City Council. Adoption of such proposed rules and regulations requires joint approval by the Board of Police Commissioners and the Chief of Police. In the event joint approval is not provided by the Board of Police Commissioners and the Chief of Police, either party may bring forward to the City Council the proposed rule or regulation for the City Council's consideration.

(d) The Board of Police Commissioners shall have the authority to receive and review all civilian and internal allegations of misconduct by members of the Police Department. The Mayor's proposed budget and the City Council shall annually appropriate an amount necessary for the adequate support and facilitation of such review. To the greatest extent permitted by law, the Chief of Police shall provide the Board of Police Commissioners timely updates of any review, investigation, or disposition of alleged misconduct, and the Board of Police Commissioners shall have

33 the ability to request additional information from the Chief of Police and access to all documents or other evidence
34 relied upon by the Chief of Police in reviewing allegations of misconduct. For ~~higher-level~~ complaints of alleged
35 misconduct ~~that warrant suspension or more severe discipline~~, the complaint may not be disposed until the Board of
36 Police Commissioners is notified of the proposed disposition.

37 After receiving notice from the Chief of Police of the recommended or actual disposition relating to the review of
38 alleged misconduct, the Board of Police Commissioners shall have the authority to:

- 39 (i). recommend an alternative disposition to the Chief of Police within a time established by ordinance; or
- 40 (ii) independently investigate any allegation of misconduct by members of the Police Department upon a 2/3
41 majority vote. Such investigation or review shall be conducted by an independent investigator hired by the
42 Board of Police Commissioners, and approved by the City Attorney’s Office, and completed within a time
43 established by ordinance. Upon the conclusion of such an investigation, the Board of Police Commissioners
44 may make a recommendation per subsection (i). The Board of Police Commissioners shall not have the
45 authority to investigate or impose discipline upon the Chief of Police. Matters regarding the alleged
46 misconduct of the Chief of Police shall be addressed in conformity with section 190(b) of this Charter and
47 other relevant Vermont statutes.

48 (e) Upon receiving a recommendation by the Board of Police Commissioners in subsection (d), the Chief of
49 Police may accept the recommendation subject to the notice and hearing provisions in Article 62, section 190(a) or
50 reject the recommendation. In the event the Chief of Police rejects the recommendation, the Chief of Police shall
51 immediately the notify Board of Police Commissioners. Upon receiving notice of the rejection, the Board of Police
52 Commissions may, upon a 2/3 majority vote, request that an independent panel decide the disposition of the matter
53 within a time established by ordinance, subject to the notice and hearing provisions set forth in in Article 62, section
54 190(a). The disposition of the independent panel shall be final, subject to any statutory right of appeal.

55 This independent panel shall consist of ~~three five~~ (35) persons appointed on a case by case basis ~~by the Mayor as~~
56 follows: one (1) member to be appointed by the Burlington Police Officers’ Association; one (1) member of the
57 Police Commission to be appointed by the Chair; and, three (3) Mmembers to be appointed by the Mayor of the
58 independent panel and shall include at least two (2) persons with experience in law enforcement, human resources or
59 labor and employment law, or other similar experience, and one (1) member from the general public.

60 **ARTICLE 63. CHIEF OF POLICE AND CAPTAIN**

61 **185 Officers of Police force Department designated.**

62 (a) The direction and control of the entire Police force Department, except as herein otherwise provided, shall be
63 vested in a police officer who shall be called the Chief of Police and such other ranking police officers as the City
64 Council shall authorize, subject to the authority of the mayor as chief executive officer and the ordinances and orders
65 of the City Council. The order of rank and succession within the police department shall be as designated by the City
66 Council by regulation.

67 (b) Except as herein otherwise provided, such officers shall have the powers and duties granted to police officers by
68 Vermont law and assigned to them by regulations adopted under section 184 of this Charter.

69 **ARTICLE 65. REMOVAL OR SUSPENSION**

70 **190 Chief of Police may remove member for cause; hearing.**

71 (a) Whenever it shall appear to the Chief of Police that any member of said force Police Department has become
 72 incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty,
 73 or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or
 74 charges to such effect are made in writing to the Chief of Police by a responsible person against such member, the
 75 Chief of Police may investigate and, after appropriate notice and hearing, dismiss such member from the force Police
 76 Department, order a reduction in rank, or suspend the member without pay for a specified time period in excess of 14
 77 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the Chief of Police's
 78 notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the
 79 charges being considered. In connection therewith, the Chief of Police shall have the power to subpoena documents
 80 and witnesses and to administer the oath to such witnesses. Such a subpoena will be subject to enforcement or
 81 modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b. **The board of police**
 82 **commissioners shall hear any appeal filed in a timely manner with respect to such actions of the police chief. The**
 83 **time of filing an appeal and the nature of the appellate process shall be as determined by such board of regulation.**
 84 **Following its consideration of any such appeal, the board may affirm, modify, or vacate the decision made by the**
 85 **police chief.**

86 (b) Whenever it shall appear to the mayor that the chief has become incompetent, inefficient, or incapable from any
 87 cause, or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private
 88 or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the mayor
 89 by a responsible person, the Mayor may suspend the Chief of Police from duty pending a hearing thereon by the City
 90 Council. The City Council shall forthwith notify the Chief of Police of the charges preferred by them, or of the
 91 complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and
 92 investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made, shall
 93 give the Chief of Police reasonable notice of the same, not less than 48 hours, and the City Council shall have the
 94 power to subpoena documents and witnesses and to administer the oath to such witnesses. Such a subpoena will be
 95 subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b.

96 (c) If, upon hearing, the City Council shall find such complaints or charges to be well founded, it may dismiss the
 97 Chief of Police from the ~~force~~ Police Department, demote him or her in rank, or suspend him or her without pay for a
 98 period not to exceed 60 days. The procedures outlined in this section shall control in the event of any conflict with
 99 section 129 of this Charter as pertains to the removal of the Chief of Police.

100 (d) The Chief of Police may, without notice or hearing for any infraction, violation, or disobedience of any of the
 101 rules and regulations of the Police Department that may seem to the Chief of Police sufficient, suspend from duty
 102 without pay any member of the Police force Department for a period not to exceed 14 days.

105 *Material underlined in black added by recommendation the Joint Committee
 106 **Material stricken out in black deleted by recommendation of the Joint Committee
 107 ***Materials underlined or stricken out in red by recommendation of the Charter Change Committee

110 HM/JD/Resolutions 2024/ NAME
 111 DATE