



**Tuesday, June 25, 2024, 7:30 PM, Public Works Conference Room at 645 Pine St. OR
REMOTELY via ZOOM**

**When: Jun 25, 2024 07:30 PM Eastern Time (US and Canada)
Topic: Charter Change Meeting**

Please click the link below to join the webinar:

<https://zoom.us/j/91403316495?pwd=3nLlGyzvUUB65ixiryQmV7sETr4zfc.1>

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+1 507 473 4847 US

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1. Agenda

Subject	1.1. Motion to amend/adopt agenda
Meeting	June 25, 2024 - Charter Change Committee Meeting - Tuesday, June 25, 2024, 7:30 PM, Public Works Conference Room at 645 Pine St. OR REMOTELY via ZOOM
Category	1. Agenda
Department	
Type	
Recommended Action	

2. Adopt Draft Minutes from June 18

Subject	2.1. Adopt Draft Minutes from June 18
Meeting	June 25, 2024 - Charter Change Committee Meeting - Tuesday, June 25, 2024, 7:30 PM, Public Works Conference Room at 645 Pine St. OR REMOTELY via ZOOM
Category	2. Adopt Draft Minutes from June 18
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Verbal Comments
Meeting	June 25, 2024 - Charter Change Committee Meeting - Tuesday, June 25, 2024, 7:30 PM, Public Works Conference Room at 645 Pine St. OR REMOTELY via ZOOM
Category	3. Public Forum
Department	Council and Board
Type	

4. Councilor Discussion and Review of Draft Police Oversight Changes

Subject	4.1. Councilor Discussion and Review of Draft Police Oversight Changes
Meeting	June 25, 2024 - Charter Change Committee Meeting - Tuesday, June 25, 2024, 7:30 PM, Public Works Conference Room at 645 Pine St. OR REMOTELY via ZOOM
Category	4. Councilor Discussion and Review of Draft Police Oversight Changes
Department	Council and Board
Type	
Recommended Action	

5. Any Other Committee Business

Subject	5.1. Any Other Committee Business
Meeting	June 25, 2024 - Charter Change Committee Meeting - Tuesday, June 25, 2024, 7:30 PM, Public Works Conference Room at 645 Pine St. OR REMOTELY 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 25, 2024 - Charter Change Committee Meeting - Tuesday, June 25, 2024, 7:30 PM, Public Works Conference Room at 645 Pine St. OR REMOTELY via ZOOM

Category 6. Adjournment

Department Council and Board

Type

Recommended Action

Charter Change Committee
Tuesday, June 18, 2024
Public Works Conference Room at 645 Pine St. or Remote via Zoom.
DRAFT MINUTES

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

Staff Present: Kimberlee Sturtevant (Assistant City Attorney), Chief Jon Murad (BPD), Detective Joseph Corrow (BPD)

Public Present: Commissioner Keefe

Meeting called to order at 5:09 PM.

1. Agenda

1.01 Motion to amend/adopt agenda

Motion to Adopt Agenda as is.

Motion by Councilor Carpenter, Seconded by Councilor Doherty

Final Resolution: Motion Passes

Yes: Unanimous

2. Adopt Draft Minutes from 6/12

2.01 Adopt Draft Minutes from 6/12

Motion to Amend Draft Minutes from June 12, 2024 by clarifying Commissioner Cox's statement to read that "Commissioner Cox does not believe the Commission should undertake investigations."

Motion by Councilor Bergman, Seconded by Councilor Carpenter

Final Resolution: Motion Passes

Yes: Unanimous

3. Public Forum

No members of the public spoke at public forum.

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

Attorney Sturtevant shared the draft changes to the charter in resolution format. The proposed changes can be found in the agenda packet.

Councilor Bergman explained that the small change to line 29 of the draft resolution to include the words "The Mayor's proposed budget and..." is to accommodate the budget structure of the city. Change approved without objection.

Councilor Bergman said that the changes to lines 34 and 35 of the draft resolution is to clarify the circumstances when a complaint can and cannot be disposed without notifying the Board of Police Commissioners. Councilor Bergman asked Attorney Sturtevant and others for more clarity on how the change to line 35 will align with Department Directive (DD) 40 and the BPOA union contract.

Detective Corrow said that an officer would be put on paid administrative leave after an allegation, but before any potential discipline. He continued that the City does not consider administrative leave to be a punishment.

Councilor Bergman asked Attorney Sturtevant to work on the clearest language for line 35 that would ensure there are no ambiguities on when the Commission must be notified of the disposition of a complaint.

Councilor Bergman said the changes to lines 46-47 was in response to a comment from Commissioner Keefe. The change is to accommodate any further other statutory issues that may arise from misconduct from the Chief of Police. Change approved without objection.

Councilor said that change to line 53 came from a request from the BPOA to make clear that disposition would happen in a timely manner as laid out in an ordinance. The change to line 54 was from a request from Commissioner Keefe to make clear the finality of the disposition from the independent panel. Councilor Bergman said he would like to adjust the change to line 54 to be “applicable right of appeal or grievance process” instead of “statutory right of appeal” to ensure there are no changes to the union grievance and arbitration system.

Commissioner Keefe asked if the independent panel is taking the power of final disposition away from the Chief and thus the grievance would go to the panel instead of the Chief. If there is no answer in that grievance to the panel then it would go to arbitration.

Councilor Bergman said he would like to leave the Chief as the person that hears the first step of the grievance. Councilor Doherty asked for the City Attorney’s Office to examine this issue and talk with BPD and the BPOA about this potential change.

Councilor Doherty said the draft changes to lines 55-59 did not reflect his thoughts from the previous meeting. He said that his original intent was to have a member appointed by the Commission rather than have a Commissioner themselves on the panel. The Committee was in agreement that it would be a person appointed by the Commission rather than a member of the Commission itself.

Councilor Carpenter said it seemed repetitious to have the BPOA and Commission both have appointees on the independent panel as well as being involved in other levels of the process. She continued that she favors having three members but is unsure who would appoint them.

Councilor Doherty said that having appointees from these two groups did not effect the independence of the independent panel. He continued that the logistics of finding and appointing panelists should be the prerogative of the appointing entities. He said that the BPOA has not

made large requests of the Committee and having one member of the panel be appointed by them would be fair and modest.

Detective Corrow said the BPOA wants the process to be fair and having an appointed member would be helpful to that goal. The BPOA is interested in having a fair disciplinary process rather than just seeking the least severe discipline for its members. He continued that he was concerned that the independent panel could be weaponized against the police depending on who is appointed and who is the Mayor. He said that the Department has lost applicants after they read the proposed charter changes. He said the criteria for appointment by the Mayor should have a minimum of 10 years of experience in law enforcement or labor or employment law.

Councilor Bergman said he was fine with having a five person independent panel. He said he is not in favor of having a BPOA-appointed member. Councilor Bergman said the union will be at the table for any grievances or arbitration and should not be able to pick one of the panelists.

Councilor Doherty also asked for a drafting change to lines 58-59 to clarify the kinds of experience that are necessary to be appointed by the Mayor to the panel.

Councilor Bergman said that the material in lines 81-85 was removed in a previous draft but is being placed back into the current draft. Change approved without objection.

5. Any Other Committee Business

The Committee's next meeting is set for June 25 at 7:30 PM.

6. Adjournment

6.01 Adjournment

Motion to Adjourn.

Motion by Councilor Doherty, Seconded by Councilor Carpenter

Final Resolution: Motion Passes

Yes: Unanimous

The meeting was adjourned at 6:38 PM.

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

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.

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

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Adopted by the City Council

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..... Clerk

Approved....., 20

..... Mayor

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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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Adopted by the City Council

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..... Clerk

Approved....., 20

..... Mayor

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Attest:

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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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RESOLUTION RELATING TO

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has been sent to the following
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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

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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.

Email from Joseph Corrow of the Burlington Police Department and Burlington Police Officers' Association, 2024-06-21

Councilor Bergman,

I apologize for the delay in this. Here are the questions posed by our council:

It appears that they are recommending essentially making the Police Commission the hiring & disciplinary authority in the first instance, as I understand Section 184 (b) through (d). How can this be consistent with the whole notion of collective bargaining & the current agreement? It seems to me that this changes the collective bargaining entity on behalf of the employer completely from the City (through the Chief) to the City (through the Chief & the Police Commission). Is the Police Commission going to have members present at bargaining now?

And under Section 184(d), the Police Commission is now going to be the recipient & evaluator of all complaints about officers? How does this impact the confidentiality of these matters from an officer perspective?

So they are creating another layer of hierarchy and this provision also does not indicate what happens if an officer disagrees, as opposed to the Chief of Police? These changes are doing away with the right of appeal of an officer completely, as far as I can tell. (This last one is not a question, but I think it is important to highlight as we want to make sure changes to the charter do not at all cause this to be the case.

Joseph Corrow | Detective
Burlington Police Department
1 North Ave
Burlington, VT 05401

Resolution Relating to

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

RESOLUTION _____

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 ~~foree-Department~~ and shall fix the qualifications of applicants for positions and service on said ~~foree-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, and City Council, 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 complaints of alleged misconduct ~~that~~
35 ~~warrant suspension or more severe discipline that constitute an offense subject to an investigation of the Vermont~~
36 ~~Criminal Justice Training Council pursuant to 20 V.S.A 2401 et seq. or for which the Chief of Police intends to~~
37 ~~impose discipline constituting loss of pay, suspension, or termination, the complaint may not be disposed until the~~
38 Board of Police Commissioners is notified of the proposed disposition.

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

41 (i) recommend an alternative disposition to the Chief of Police within a time established by ordinance; or

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

50 (e) Upon receiving a recommendation by the Board of Police Commissioners in subsection (d), the Chief of
51 Police may accept the recommendation subject to the notice and hearing provisions in Article 62, section 190(a) or
52 reject the recommendation. In the event the Chief of Police rejects the recommendation, the Chief of Police shall
53 immediately the notify Board of Police Commissioners. Upon receiving notice of the rejection, the Board of Police
54 Commissions may, upon a 2/3 majority vote, request that an independent panel decide the disposition of the matter
55 within a time established by ordinance, subject to the notice and hearing provisions set forth in in Article 62, section
56 190(a). The disposition of the independent panel shall be final, subject to any ~~statutory~~ applicable right of appeal or
57 grievance process.

58 This independent panel shall consist of ~~three~~ five (35) persons appointed on a case by case basis as follows: one (1)
59 member to be appointed by the Burlington Police Officers’ Association; one (1) member ~~of the~~ to be appointed by the
60 Police Commission to be appointed by the Chair; and, three (3) members to be appointed by the Mayor ~~and shall~~
61 follows: ~~include at least two~~ one (12) persons-member with at least five (5) years of work experience in ~~in law~~
62 ~~enforcement, human resources or resources, or the labor and employment sector; (one) (1) member with at least x (x)~~
63 ~~years of work experience in law enforcement; law, or other similar experience, and, one (1) member from the general~~
64 public.

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

66 **185 Officers of Police ~~for~~ Department designated.**

67 (a) The direction and control of the entire Police ~~for~~ Department, except as herein otherwise provided, shall be
68 vested in a police officer who shall be called the Chief of Police and such other ranking police officers as the City
69 Council shall authorize, subject to the authority of the mayor as chief executive officer pursuant to §116 and ~~the~~
70 ~~ordinances and resolutions and orders of the City Council.~~ The order of rank and succession within the police
71 department shall be as designated by the City Council by regulation.

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

ARTICLE 65. REMOVAL OR SUSPENSION

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

(a) Whenever it shall appear to the Chief of Police that any member of said ~~force~~ Police Department has become incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the Chief of Police by a responsible person against such member, the Chief of Police may investigate and, after appropriate notice and hearing, dismiss such member from the ~~force~~ Police Department, order a reduction in rank, or suspend the member without pay for a specified time period in excess of 14 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the Chief of Police's notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the charges being considered. In connection therewith, the Chief of Police shall have the power to subpoena documents and witnesses and to administer the oath to such witnesses. Such a subpoena will be subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b. The board of police commissioners, or in the case it has already offered an opinion on discipline pursuant to §184(d)(i), an independent panel assembled as in §184(e) -shall hear any appeal filed in a timely manner with respect to such actions of the police chief. The time of filing an appeal and the nature of the appellate process shall be as determined by such board of regulation. Following its consideration of any such appeal, the board may affirm, modify, or vacate the decision made by the police chief.

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

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

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

*Materials in red are changes since 6/18 mtg. draft

HM/JD/Resolutions 2024/ NAME
DATE