

Charter Change Committee
Monday, July 1, 2024
Bushor Conference Room in City Hall. or Remote via Zoom.
DRAFT MINUTES

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

Staff Present: Kimberlee Sturtevant (Assistant City Attorney), Hayley McClenahan (Assistant City Attorney), Jon Murad (Chief of Police), Eric Dallamura (BPD, BPOA)

Public Present: Jeffrey Jarrad, Jack Keefe (Police Commission), Carolyn Hanson, Chris Haessly (Marketplace Commission), Mark Hughes, Shelby Lincoln

Meeting called to order at 5:32 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 6/25

2.01 Adopt Draft Minutes from 6/25

Motion to Adopt Draft Minutes from June 25.

Motion by Councilor Doherty, Seconded by Councilor Carpenter

Final Resolution: Motion Passes

Yes: Unanimous

3. Public Forum

Carolyn Hanson: I was fortunate to be on the Police Commission for six months. I feel like the Commission has good processes, but reading the minutes from the last meeting I feel like the Commission has been thrown to the weeds. A lot of conversation is going into who will be going to be on the independent panel. I would urge you all to read DD-40 as it lays out a really good process. I would also encourage you to look at what the Criminal Justice Training Council does. The Council usually has the department do an internal investigation, but they have the power to hire an outside investigator to do an investigation if necessary. I think it is important to consider every option before we expand the budget to pay for more things. My boss, the Attorney General, did not want me to continue to be on the Commission and I found it very hard to find people to recruit to be on the Commission. I don't know what the independent panel will accomplish, even while we already have a good process in the Commission currently. My two big issues that I could never raise with the Commission during my tenure was that the

department always needs to have someone answer the phone when the public calls. The other issue is the department lobby is horrendous and not inviting. It feels like you're going into a jail. I think those two things would go a long way to building trust with the public.

Eric Dallamura: I am the treasurer of the BPOA. I don't think it is necessary to have a panel with individuals that are handpicked by political leaders, either the Mayor or the Council. We already have an HR Department, we have State oversight. This will drag out the process and will be bad for morale. I appreciate you are moving things along to get the issue to the voters quickly. BPOA wants educated people to make the important decisions and do it quickly. It is in the interest of the BPOA to have good officers and that is good for the public as well.

Jeffrey Jarrad: I am a resident of Ward One. I don't know every detail of things that have happened in the last five years and I am working on that. But if I made a list of issues or difficulties from the last five years I would include things like officers being paid out and resigning and complaints from the public. So what would those issues have looked like if we had the proposed changes to the charter in effect at that time. Would these proposed changes have mitigated or eliminated some of the issues? That is a litmus test of the value of the changes to the charter.

Mark Hughes: I would like to see some oversight of every agency in the state that is substantial and impactful. There is overlap here with Title 20 on the state side. Everybody wants to be safe and have a fair process. This department was the first to require use-of-force (UOF) data and that was back in 2018 or 2019. There was some pushback on that. Because of that change the rest of the state started requiring that data shortly after. I still think the proposed changes are not enough. I say that as a former Police Commissioner and retired army officer. I understand what oversight and responsibility looks like. I don't see why you don't advance this to the full Council before it gets killed before it sees the light of day. Then we can hold Councilors accountable since it is a political process, just as the Commission is political because of how the members are appointed. I do not think most of the officers that have had important complaints about them are or were "bad" police officers. I think there is a bad system which is why we need oversight. It is intrinsically designed to fail. Even the proposed appointment process for the independent panel creates a predictable outcome. It builds fortifications to protect the system. We should stop this and bring the changes to the Council.

4. Councilor Discussion and Review of Draft Police Oversight Changes

Attorney Sturtevant shared the draft language changes in resolution format. The draft resolution is available in the agenda packet.

Councilor Carpenter said that while the Committee has spent time on particulars recently, a lot of the big changes to the charter are to codify the current working processes of the Commission and the Department as they are currently only in effect by executive order from the Mayor.

Councilor Bergman said that the Mayor's Office also sent in a request late in the day and the Committee will be seeing that for the first time tonight.

Attorney Sturtevant said the change to line 32 was to correct a typo. The change to lines 33-34 is to establish that the Commission has access to certain kinds of documents as laid out in ordinance. This change was to ensure confidentiality and to bring the charter language into line with the current working processes and allow changes in document access to be made in ordinance which is easier to adjust going forward.

All councilors agreed that the change in proposed language was what they intended.

Attorney Sturtevant continued that the changes to lines 58-64 were to move the experience requirements to be on the independent panel into ordinance rather than charter. Councilor Bergman clarified that the stricken language to have an appointment from the BPOA was to reflect a request from the BPOA and not language that was approved by the Committee. The language change was voted on in the June 25 meeting.

Councilor Doherty reiterated Councilor Carpenter's comment that most of the proposed changes are to codify the existing processes between the Commission and the Department that are working well. He said he has not heard the BPOA say the current system is not working. One issue that is not currently addressed is if there is a difference in opinion on discipline between the Commission and the Chief. That is the reason for the independent panel.

Councilor Doherty continued that he didn't think the Committee had voted on the inclusion of the BPOA appointment, but rather had agreed to disagree and moved on. He said he disagrees with the current draft language and would like the BPOA to have an appointee on the panel.

Councilor Carpenter said that the Committee contemplated other ideas instead of the current proposed independent panel. She said that most communities in Vermont use the legislative body as the final appeal body and Burlington does not. She said she isn't sure the City Council wants that authority, but it was discussed. She said there has to be a body that can make a decision if there is a disagreement between the Chief and the Commission.

Motion to have the City Council be one of the appointing bodies for the independent panel in place of the BPOA.

Motion by Councilor Bergman, Seconded by Councilor Carpenter

Final Resolution: Motion Passes

Yes: Councilors Bergman and Carpenter

No: Councilor Doherty

Councilor Doherty reminded everyone that there is still more procedural steps to complete before the current proposed language will be put into the charter. The proposed language must be passed out of the Committee, go through the City Council, and be approved by the voters.

Attorney Sturtevant said the changes to lines 69-71 were only to clarify the current powers of the Mayor and that the changes do not confer additional powers onto the Mayor.

Councilor Bergman said he supported the changes to ensure there is no question about the existing powers of the Mayor due to a lack of a reference. Councilors Carpenter and Doherty agreed.

Attorney McClenahan said the changes to lines 88-90 were due to the optics of the Commission exercising their authority under Section 184(d) to make discipline recommendations or hire an outside investigator, while then also potentially sitting as an appellate body for an officer facing discipline under Section 190(a). She said the proposed language would allow the independent panel to be used as an appellate body if there is not a quorum of commissioners due to some commissioners feeling they have actual or apparent conflicts of interest.

Councilor Carpenter said there was some concern about having the Commission be an appellate body for officers but the Committee also heard that both the BPOA and the Commission wanted to keep the Commission as the appellate body. She said she agreed with the proposed changes.

Councilor Doherty also agreed and said this was a helpful change to ensure that there are no violations of any officer's due process rights. Councilor Bergman also agreed and that the changes insulates the Commission from any appearance of a conflict.

Jon Murad (Chief of Police) said there was previous arbitration wherein the arbitrator found no conflict even without this proposed change. The counsel for the Police Commission at the time had a different opinion, however. There was actually already a situation where the Commission changed their mind in an appeal of discipline after they heard more evidence and heard from the officers directly involved through the appeal process. That is to say the Commission was not tainted by the initial consultation with the Chief and can, and has, changed its opinion on appeal.

Attorney Sturtevant said the changes to lines 112-115 is a codification of the current system that only exists by executive order. This language is by request of the Mayor's Office.

Jon Murad said the proposed language is taken almost verbatim from an executive order from 2020 and that he had no issue with the language being included in charter.

Attorney McClenahan said the inclusion of the language that allows the process to be designated in ordinance was to allow the details like timing to be laid out in a more adjustable way through ordinance.

Councilor Doherty did not see why the language needed to be included in charter at all. The Mayor can have a standing order with the Chief of Police about how the Mayor should be informed of such incidents and their disciplinary outcome.

Councilor Bergman said the inclusion of the language that allows the process to be laid out in ordinance conflicts with the current statutory structure. The nature of the discipline goes beyond what is being considered here. The nature of discipline is laid out already in things like DD-40. Councilor Bergman says it does make sense for the Mayor to be informed by the Chief of UOF incidents or issues of significant public concern and having that in charter is sensible. He said he

was supportive of the proposed changes if the language “by a process designated by ordinance” was removed.

Jon Murad said DD-40 already directs the Chief to consult with the Mayor, City Attorney, and/or HR Director as necessary for disciplinary matters. That consultation is already built into the current system.

Councilor Carpenter said the proposed charter language seems redundant given what is already in DD-40. She said the language “seek the Mayor’s concurrence with the Chief’s decision” does not make sense. She said the Mayor should be informed of such issues, but the rest of charter lays out the process and does not consider that the Chief will seek the Mayor’s concurrence on discipline.

Councilor Bergman said the proposed language seems aspirational, but does not require the Chief and Mayor to come to an agreement on discipline.

Councilor Carpenter said the language should be more general and only instruct the Chief to consult with the Mayor about these issues.

Councilor Doherty said he was uncomfortable with adding this language to the charter and that it is too specific to be in the charter.

Councilor Bergman said he is fine with not including the language as the consultation is included in DD-40.

Motion to refer with recommendation the draft charter changes back to the City Council to be placed on the November, 2024 ballot as drafted and be warned for public hearing.

Motion by Councilor Carpenter, Seconded by Councilor Bergman

Motion to divide the previous motion into two questions: one to refer the draft language back to the City Council and another about recommending the language for adoption.

Motion by Councilor Doherty, Seconded by Councilor Bergman

Final Resolution: Motion Passes

Yes: Unanimous

Motion to refer the current draft charter change language back to City Council.

Motion by Councilor Doherty, Seconded by Councilor Bergman

Final Resolution: Motion Passes

Yes: Unanimous

Motion to recommend the current draft charter change language be placed on the November, 2024 ballot and be warned for public hearing.

Motion by Councilor Bergman, Seconded by Councilor Carpenter

Final Resolution: Motion Passes

Yes: Councilors Bergman and Carpenter

No: Councilor Doherty

Councilor Doherty clarified that he believes the BPOA has been supportive of many parts of this drafting process and at present the draft language is not something he can recommend. He said he is glad to see the process move back to the City Council but is also hopeful that there will be some final changes in the City Council.

5. Any Other Committee Business

Councilor Carpenter brought up the possibility of a future charter change to the redistricting process that would take the process away from the legislature. Councilor Bergman added two other potential future charter changes: councilor compensation and the public financing of elections.

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 7:18 PM.