



Police Commission

Tuesday, June 18, 2024, 6:00 PM, This Meeting will be held on Zoom only and there will be no physical meeting location

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1. Agenda

1.1. Call to Order

1.2. Roll Call and Determination of Quorum

1.3. Additions or Modifications to Agenda

1.4. Commissioner Comments

2. Public Forum

2.1. The public is invited to address the Commission

3. Revisions to DD40

Subject

3.1. Revisions to DD40 and Role of the Burlington Police Commission in Reviewing Complaints Against BPD Employees

Meeting

June 18, 2024 - Burlington Police Commission Special Meeting - Tuesday, June 18, 2024, 6:00 PM, This Meeting will be held on Zoom only and there will be no physical meeting location

Category

3. Revisions to DD40

Department

Other

Type

Recommended Action

Subject **3.2. Discussion and deliberation on DD40 in respect to the 14 day time frame as found on page 17, D4 and potential conflicts in BPC's role in both weighing in on a discipline and in being an appellate body.**

Meeting June 18, 2024 - Burlington Police Commission Special Meeting - Tuesday, June 18, 2024, 6:00 PM, This Meeting will be held on Zoom only and there will be no physical meeting location

Category 3. Revisions to DD40

Department Police Department

Type

Recommended Action

Subject **3.3. DD40 Status of CNA recommendations**

Meeting June 18, 2024 - Burlington Police Commission Special Meeting - Tuesday, June 18, 2024, 6:00 PM, This Meeting will be held on Zoom only and there will be no physical meeting location

Category 3. Revisions to DD40

Department Other

Type

Recommended Action

Subject **3.4. Commissioner Keefe Comments section IX DD40**

Meeting June 18, 2024 - Burlington Police Commission Special Meeting - Tuesday, June 18, 2024, 6:00 PM, This Meeting will be held on Zoom only and there will be no physical meeting location

Category 3. Revisions to DD40

Department Other

Type

Recommended Action

Subject **3.5. Consolidated DD040 v2 Commissioner Keefe**

Meeting June 18, 2024 - Burlington Police Commission Special Meeting - Tuesday, June 18, 2024, 6:00 PM, This Meeting will be held on Zoom only and there will be no physical meeting location

Category 3. Revisions to DD40

Department Other

Type

Recommended Action

4. Executive session

5. Adjournment

5.1. Motion to Adjourn

6. Informational and Non-Discrimination Statements

Subject	6.1. This agenda is available in alternative formats upon request. For more information on access, call Lori Olberg, Licensing, Voting and Records Coordinator (802-865-7136)(TTY 802-865-7142). Persons with disabilities who require assistance or special arrangements to participate are encouraged to contact 802-865-7000 (voice) or 802-865-7142 (TTY) at least 72 hours in advance so that proper arrangements can be made. This meeting will also air on Town Meeting TV the Wednesday after the meeting, starting at 8:00 pm and repeating at 1:00 am and 7:00 am the following day. The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information.
Meeting	June 18, 2024 - Burlington Police Commission Special Meeting - Tuesday, June 18, 2024, 6:00 PM, This Meeting will be held on Zoom only and there will be no physical meeting location
Category	6. Informational and Non-Discrimination Statements
Department	Council and Board
Type	

BURLINGTON POLICE COMMISSION POLICY
Role of the Burlington Police Commission in Reviewing Complaints Against BPD
Employees
Adopted August 25, 2020

Purpose: The purpose of this policy is to support principles of fair and impartial policing within the City of Burlington Police Department by adopting a procedure that defines the role of the Burlington Police Commission in reviewing complaints against agency members.

Policy:

1. When a complaint is received by the Burlington Police Department about the conduct of an employee of the Burlington Police Department, the Chief of Police shall cause that complaint to be investigated as soon as practical by an individual or individuals with no interest in or attachment to the issue or officer(s) being investigated. When a complaint is received by members of the Burlington Police Commission, the member of the Burlington Police Commission should encourage the person making the complaint to submit it via the Burlington City website or should personally take the complaint, attempting to capture all the information otherwise contained in the Citizen's Complaint Form. [See Appendix A]
 - a. All complaints, whether generated externally or internally, are referred to as Citizen's Complaints.
 - b. All Citizen's Complaints are documented on a spreadsheet maintained by the Deputy Chief of Administration, or designee.
 - c. Lower-level and some mid-level complaints that are able to be resolved quickly and at first level of supervision, remain as Citizen's Complaints.
 - d. Some mid-level complaints may be escalated to an Administrative Review (AR). An AR is designed to determine if a complaint needs to be elevated to a Bureau of Internal Affairs investigation or if it is able to be handled without a robust personnel investigation.
 - e. Higher-level complaints will either be an Administrative Review or will be escalated to a Bureau of Internal Affairs investigation.
 - f. Lower-level, mid-level, and higher-level complaints will be categorized consistent with the Burlington Police Officers' Association Contract, Article XV, section 15.2. [See Appendix B]
2. The Deputy Chief of Administration, or his/her designee, will maintain a written record of each complaint. That written record will at a minimum include:
 - The name(s) of the employee(s) involved.
 - The date of receipt of the allegation.
 - The date of the alleged incident, if known.
 - The type or nature of the allegation.

- The name(s) of the person(s) who investigated.
- The final disposition of each complaint.
- How the matter was closed out with the complainant.

In addition, if the complaint involves an allegation of excessive use of force, or an allegation of dishonesty or other serious misconduct, the written record will include:

- All action taken in response to the complaint.
 - Identification of all witnesses, documents, evidence, or other information obtained or consulted in the course of the investigation.
3. The written record of each complaint will be considered confidential. Each Commissioner shall have access to the written records of all complaints upon request to the Chief, subject to the Vermont Public Records Act, and the Burlington Police Officers' Association agreement. Further information may be available to the Commissioner receiving the records upon the completion of a fingerprint-supported background check and the execution of a confidentiality agreement.
 4. The Chief will report to the Police Commission on all complaints against members of the department as follows:
 - Updates about complaints against employees will be shared with the Commission in Executive Session at the first meeting following receipt of the complaint, unless the matter is of such urgency that a special meeting is required. Status updates on the progress of complaints under investigation will be provided to the Commission, as appropriate, and further detail and access to reports/video/etc shall be provided to the Police Commission in Executive Session at the first meeting after the investigation has been completed.
 - For lower- and mid-level complaints, the Chief will provide a verbal or written summary of the complaints and their status or disposition in Executive Session.
 - For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that results in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief will provide the Police Commission with a full verbal briefing of the allegations and the recommended disposition of the case in executive session.
 - The Chief of Police, or his/her designee, will report to the Police Commission in Executive Session on a monthly basis regarding any Use-of-Force incidents. The update shall include demographic data about the officer(s) and subject(s) such as gender, age, and race, and also provide a description of incident.

- At the request of any member of the Police Commission, the Chief will make the written record available for Executive Session review by the Police Commission, as well as any audio or video footage, written materials, evidence, or other information related to the allegation.
 - The Chief of Police, in consultation with the States Attorney's Office, will make the determination of if a complaint needs to be referred outside the Department for investigation of possible criminal conduct. If the complaint has been referred outside of the Department for investigation of possible criminal conduct, the materials will be made available to the Police Commission in Executive Session once a determination has been made that the materials may be disclosed to the Police Commission without adversely affecting any possible prosecution.
5. After receipt of the report described above, the Police Commission may:
- accept the Chief's report and recommended action in full or in part;
 - request additional information;
 - request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, disposition (including recommending a range of sanctions for the misconduct), or other aspect of the matter, or
 - postpone action to a later date, but no later than 14 days from the date of initial receipt of the report.
6. The Chief may accept or reject the Police Commission's recommendations. If the Chief rejects the Police Commission's recommendations, the Chief shall explain to the Police Commission why the recommendations were not accepted. If a majority of the Police Commission disagrees with the Chief's decision, the Police Commission Chair shall report this to the Mayor. Police Commission members should take care to avoid unauthorized disclosure of confidential information. To that end, any Commissioner may consult with the City Attorney's Office to obtain advice related to, among other things, the use and disclosure of confidential information.
7. The Chief of Police is responsible for reporting any misconduct of Burlington Police Department employees that falls under 20 VSA 2401 to the Vermont Criminal Justice Training Council.
8. Whenever the Police Commission becomes aware of allegations of misconduct by the Chief of Police, or if the Police Commission has concerns about the performance of the Chief of Police, the Police Commission Chair shall report this to the Mayor in a timely manner. In the event that the Chief of Police has engaged in misconduct pursuant to 20 VSA 2401, the

Police Commission Chair shall report this to the Chair of the Vermont Criminal Justice Training Council.

9. The Police Commission shall report to the Burlington City Council twice each year regarding this policy. The report shall include a redacted summary of the number, type, and disposition of complaints reported to the Police Commission.

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**BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD40 External and Internal Complaints, Supervisor Reviews,
Administrative Reviews, Internal Investigations & Discipline**
Reviewed and published ~~March-June~~ xx, 2024

PURPOSE: To ensure any person can bring forward complaints about the conduct of employees of the Burlington Police Department (BPD) whenever a person believes an employee has acted improperly. To establish a process that enables the BPD to initiate positive corrective action, re-training, or education, and, when appropriate, effective discipline for improper conduct. To guarantee that employees' due process rights are safeguarded while also protecting employees from unwarranted criticism for properly discharged duties. To support principles of fair and impartial policing within the BPD by delineating the role of the Board of Police Commissioners in reviewing complaints against employees.

POLICY: The Burlington Police Department has a well-established tradition of serving the community with integrity and professionalism. To maintain our proud tradition and continue improving the quality of the BPD's service, each and every employee must accept responsibility for maintaining high professional standards.

CONTENTS:

- I. Definitions
- II. External and Internal Complaints
- III. Supervisor Reviews, Administrative Reviews & Internal Investigations
- IV. Supervisory Authority
- V. Employee Rights and Obligations
- VI. Administrative Quality Control
- VII. Authority and Actions of the Chief of Police
- VIII. Discipline
- IX. Board of Police Commissioners
- X. Act 56
- XI. Appeals
- XII. Dismissal
- XIII. Retention of Records
- XIV. Additional Sources & References

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I. DEFINITIONS

- A. **Complaint.** Any allegation that a BPD employee has performed in an unsatisfactory manner. This includes allegations of corruption, or allegations that a BPD employee has violated the BPD's rules or directives, or the laws of the City of Burlington, the State of Vermont, or the United States of America.

1. External complaint. A complaint made against a BPD employee by a person who is not a BPD employee shall be considered an external complaint.
 2. Internal complaint. A complaint made against a BPD employee by a person who is also a BPD employee shall be considered an internal complaint.
 - a. This includes performance-related complaints made by supervisors against subordinates that require a second supervisor to conduct a review. It does not include performance-related issues that a supervisor can address via verbal coaching or written performance counseling.
 3. Invalid complaint. A complaint made against a BPD employee or filed with the BPD that is inapplicable to the BPD shall be considered an invalid complaint. Examples include complaints that refer to a different Burlington (e.g., Burlington, North Carolina, or Burlington, Ontario), ~~a complaint that cannot be reasonably separated from delusion or psychosis~~ ~~complaints that are clearly related to a complainant's mental health and are indicative of delusion or fantasy~~, complaints that refer to employees of a different department of the City of Burlington, and complaints that describe a crime experienced by the complainant that does not involve a BPD employee (e.g., a person mistakenly uses the *Burlington Police Department Online Citizen Complaint Form* to report a stolen vehicle).
- B. **Corruption.** Any activity or other conduct committed by a member of the BPD, whether on or off duty that, if substantiated, would constitute a crime.
- C. **Disciplinary action.** There is a continuum of responses to infractions. Disciplinary actions may include written reprimand, reassignment, demotion, unpaid suspension, and dismissal.
- D. **Effective internal affairs program.** As defined in 20 VSA § 2401, this means that the BPD does all of the following:
1. Accepts complaints against its employees from any source.
 2. Assigns an investigator to determine whether an employee violated the law or any BPD rule or directive.
 3. Establishes a code of conduct that outlines expectations for employees and describes prohibited activity for employees.
 4. Provides due process rights and ~~progressive~~ ~~a range of~~ discipline.
 5. Treats its accused employees fairly and decides employee discipline based on just cause, a set range of discipline for offenses, consideration of mitigating and aggravating circumstances, and due-process rights.
 6. Provides for review of employee discipline by citizens outside the department.
- E. **Employee.** Any person employed by the Burlington Police Department, to include sworn officers, sworn supervisors, and sworn reserve officers and all non-sworn professional staff members, regardless of their bargaining union (or lack thereof).

Commented [MJ1]: Language proposed by Commissioner Cox

Commented [MJ2]: Proposed by Commissioner Hanson

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F. **Infractions.** There is a continuum of infractions, ranging from low-level infractions to criminal conduct that violates the laws of the State of Vermont or the United States of America.

1. Lower-level infractions of policy and procedure typically result in coaching, training, or counseling prior to imposing discipline. These types of infractions do not generally result in a formal Administrative Review or Internal Investigation. They generally do not disrupt police duties or cause public harm. Examples of lower-level infractions could include but are not limited to:
 - a. Tardiness;
 - b. Misuse of sick time;
 - c. Late paperwork that does not adversely impact a case;
 - d. Improper care and maintenance of equipment;
 - e. Discourtesy;
 - f. On-duty cruiser operation in violation of 23 VSA, etc.
2. Mid-level infractions or repetitive lower-level infractions are generally handled at the lowest possible level beginning with a letter of reprimand or admonishment, and progressing into more substantial discipline such as suspension. They generally cause minimal or contained disruption with no impact on the community. Examples of mid-level infractions could include but are not limited to:
 - a. Repetitive lower-level issues;
 - b. Carelessness with firearms;
 - c. Accepting de minimis gratuities;
 - d. Low-level neglect of duty such as
 - i. Absences
 - ii. Falling asleep on a night shift
 - iii. Failing to maintain custody and control of weapons, Criminal Justice Information Services (CJIS) systems, or encrypted technology;
 - e. More substantial courtesy matters; etc.
3. Higher-level infractions may result in more substantial discipline. They generally carry a high risk of disruption to police duties and/or impact the community. These kinds of infractions could include but are not limited to things such as:
 - a. Veracity issues;
 - b. Harassment;
 - c. Excessive force;
 - d. Knowing associations with criminals or targets of investigation;
 - e. Abuse of authority;
 - f. Failure to follow orders;
 - g. Political activity restrictions;
 - h. Criminal conduct in violation of Vermont law or federal law.

Commented [MJ3]: Proposed by Commissioner Hanson. Note that "Section F. Infractions" was lifted from the BPOA contract, and this addition would deviate.

Commented [MJ4]: Proposed by Commissioner Hanson. Note that "Section F. Infractions" was lifted from the BPOA contract, and this addition would deviate.

Commented [MJ5]: Proposed by Commissioner Hanson. Note that "Section F. Infractions" was lifted from the BPOA contract, and this addition would deviate.

G. **Non-disciplinary action.** There is a continuum of responses to infractions. Non-disciplinary actions may include education, training or retraining, verbal coaching, written performance counseling, or referrals to professional counseling.

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- H. **Other misconduct.** Any activity, improper behavior, or other conduct committed by a member of the BPD, whether on or off duty that, if substantiated, would impugn the integrity of the BPD in a way that would erode the trust and ability to assist witnesses, victims, or other members of the public.
- I. **Review.** All valid complaints will be reviewed. There are three levels of review, in ascending order of complexity and seriousness: supervisor review, Administrative Review, and Internal Investigation. See Section III.

Commented [MJ6]: Councilor Hanson asked about this; it is taken from an existing definition in D43.

II. EXTERNAL AND INTERNAL COMPLAINTS

- A. **All complaints accepted.** Allegations that a BPD employee has committed an infraction may be initiated from outside or inside the BPD. Every such allegation will be accepted by the BPD. All complaints must be reported to the Chief of Police.
1. The most common manner in which complaints are lodged is via the City of Burlington's website, on the Police Department page, under the tab "Citizen Complaints and Compliments," where users can access the *Burlington Police Department Online Citizen Complaint Form*. This is an online, fillable e-form. The independent Board of Police Commissioners automatically receives all online complaints.
 2. Written copies of the *Citizen's Complaint Form*, which can be completed by a complainant, are also available at the City website. A copy of the form is included in the appendix of this directive. Additionally, forms are available at:
 - a. City offices: such as the Mayor's office, the Community Justice Center, CEDO, the City Attorney's office, the Miller Center, Parks & Recreation, and the Burlington Electric Department.
 - b. Non-governmental locations: such as the Peace and Justice Center, Migrant Justice, AALV, and Burlington High School.
 3. Verbal or written complaints to the Mayor's Office, members of the City Council, and the Police Commission will be accepted without need for a written *Citizen's Complaint Form* or *Burlington Police Department Online Citizen Complaint Form*.
 43. Complainants will be asked to provide a preliminary category describing the nature of their allegations, selecting from:
 - a. Force. A complaint alleging that a BPD officer used force that was not objectively reasonable. Excessive force is force that is not objectively reasonable from the perspective of a reasonable officer in the same circumstances. ***Excessive force will not be tolerated.***
 - b. Abuse of authority. A complaint alleging that an officer took actions for a purpose other than to accomplish a lawful law-enforcement objective, including unauthorized searches or seizures of persons, houses, papers, and effects or inappropriate entry onto private property. Abuse of authority includes racial profiling or other biased policing, as described in *DD03 Fair and Impartial Policing*, Section IX E.
 - c. Courtesy. A complaint alleging that a BPD employee acted in a rude or unprofessional manner, used rude or offensive gestures or profane language.

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- d. Offensive language. A complaint alleging that a BPD employee used language that was degrading on the basis of ethnicity, race, sex, sexual orientation, or any other protected class as described in 13 VSA § 1455.
- e. Neglect of duty. A complaint alleging that a BPD employee did not respond to or address an incident or complaint in a reasonable manner.
- ef. Other department violation. A complaint alleging a violation that does not fit into the above categories.

Commented [MJ7]: Suggested by Commissioner Hanson.

B. Citizen allegations. These are external complaints. Anyone can lodge a complaint against a BPD employee.

1. Complaints in writing. Any person can use the online *Burlington Police Department Online Citizen Complaint Form* or complete a written *Citizen's Complaint Form*. Any person making a complaint can choose to remain anonymous. If the person provides contact information, a BPD supervisor will confirm the receipt of the complaint within two business days.
2. Verbal complaints. Any person can make a verbal complaint. If the person verbally makes a complaint to a non-supervisory employee, the employee will listen and record basic facts. If the employee has a body-worn camera, the employee will activate it. The employee will then direct the person to a supervisor for additional documentation and/or to the variety of reporting methods described in Section (A) above. If the person elects not to document the complaint with a supervisor, the employee who received the complaint will share the basic facts with the Officer in Charge (OIC) prior to the end of the shift. The OIC will fill out a copy of the *Citizen's Complaint Form* with as much information as is available and inform the Deputy Chief of Administration and the Chief of Police.

C. Employee allegations. These are internal complaints. Any employee can lodge a complaint against another employee. The employee may use the online *Burlington Police Department Online Citizen Complaint Form* or complete a written *Citizen's Complaint Form*. More frequently, the employee may verbally transmit the complaint to any BPD supervisor. The supervisor will notify the Chief of Police, via the chain of command.

1. The Human Resources Department. The employee may also make the complaint to the City of Burlington Human Resources department. If the employee belongs to a union, the employee may also make the complaint to a representative of that union.
2. Reporting corruption. If the complaint alleges corruption, employees must follow the reporting procedures described in *DD43 Reporting of Corruption and other Misconduct*.
3. Other reporting venues. Nothing described herein shall prevent an employee from reporting criminality to an appropriate law-enforcement entity other than the BPD, such as the Vermont State Police, the Office of the Chittenden County State's Attorney, the Office of the Vermont Attorney General, the United States Attorney's Office for the District of Vermont, or federal law-enforcement agencies such as the Federal Bureau of Investigation.

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- D. **The Board of Police Commissioners.** All *Burlington Police Department Online Citizen Complaint Forms* are automatically forwarded to the Burlington Police Commission via email. For any written *Citizen's Complaint Form* received by the BPD or filled out by an OIC, the Deputy Chief of Administration will transmit it to the Police Commission within five business days of receipt.
- E. **Minor misunderstandings.** An exception to the BPD's citizen complaint policy applies to minor misunderstandings on the part of a complainant, which can be quickly resolved with an explanation of state law and/or BPD policy. Such minor misunderstandings may be resolved by the line supervisor and should be documented on either the Shift Report or via an e-mail to the Deputy Chief of Administration and the Chief of Police. If the complaining citizen is not satisfied with this resolution, the line supervisor will assist the citizen in completing a *Citizen's Complaint Form*.
- F. **Review or investigation.** Upon receiving a complaint, the Chief of Police will determine whether a supervisor review, an Administrative Review, or an Internal Investigation is appropriate. The Chief of Police will forward all relevant information to the Deputy Chief of Administration, who will assign a supervisor to conduct the appropriate review or investigation.
1. If the review determines that a complaint may involve possible criminal conduct, the Chief of Police will refer it to the Vermont State Police for investigation and/or consult with the Chittenden County State's Attorney's Office to determine appropriate next steps.

III. SUPERVISOR REVIEWS, ADMINISTRATIVE REVIEWS & INTERNAL INVESTIGATIONS

It is a standard supervisory responsibility that a first-line supervisor should examine subordinate conduct for the purpose of performance counseling and coaching. External or internal complaints require more substantial review. All valid complaints will be reviewed. There are three levels of review, listed below, from least to most complex. All reviews begin from the allegations in the written complaint, if one is available, or statements made by the complainant. All reviews examine available Department reports and records, such as recordings from the Emergency Communications Center, Valcour incident narratives, or body-worn camera video. All reviews result in an overview and recommendation for the Chief of Police.

- A. **Supervisor review.** The Deputy Chief of Administration will select a supervisor to conduct a review of the complaint. The supervisor shall have no interest in or attachment to the issue or employee(s) being reviewed. Subject employees are not automatically informed of supervisor reviews unless an interview is required (see A.1, below), or the complaint is "sustained."
1. If the assigned supervisor determines that it is necessary to conduct a formal, noticed interview of any BPD employee, the assigned supervisor will so inform the Deputy

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Chief of Administration, who will transition the supervisor review into an Administrative Review.

2. If the assigned supervisor determines that there is a possible violation of *DD03 Fair and Impartial Policing* or *DD05 Statewide Policy on Police Use of Force*, the assigned supervisor will so inform the Deputy Chief of Administration, who will transition the supervisor review into an administrative review.

B. Administrative Review. The Deputy Chief of Administration will select a supervisor in the rank of lieutenant or above to conduct an Administrative Review. The supervisor shall have no interest in or attachment to the issue or employee(s) being reviewed.

1. If the assigned supervisor determines that it is necessary to conduct a formal, noticed interview of any BPD employee, as subject or witness, the supervisor will provide a formal notice to the employee. Immediately prior to beginning the administrative interview, the supervisor will provide a Garrity warning. Templates of the notice and the Garrity warning are included in the appendix of this directive.
2. If the assigned supervisor determines that the review indicates a pattern of misconduct beyond the specific allegation, the assigned supervisor will so inform the Deputy Chief of Administration, who will transition the Administrative Review into an Internal Investigation.
3. If the assigned supervisor determines that the review, if it proves the allegation(s), could lead to a substantial penalty involving suspension, demotion, or termination, the assigned supervisor will so inform the Deputy Chief of Administration, who will transition the Administrative Review into an Internal Investigation.

C. Internal Investigation. The Deputy Chief of Administration will select a supervisor in the rank of lieutenant or above who has attended an accredited Internal Affairs Investigator course to conduct an Internal Investigation. The supervisor shall have no interest in or attachment to the issue or employee(s) being investigated.

1. If the assigned supervisor determines that it is necessary to conduct a formal, noticed interview of any BPD employee, as subject or witness, the supervisor will provide a formal notice to the employee. Immediately prior to beginning the administrative interview, the supervisor will provide a Garrity warning. Templates of the notice and the Garrity warning are included in the appendix of this directive.
2. If the assigned supervisor develops reasonable suspicion that the incident under investigation involves a crime, the assigned supervisor will immediately notify the Deputy Chief of Administration, who will report it to the Chief of Police. In consultation with the Burlington City Attorney, the Chief of Police will determine whether to continue the Internal Investigation or refer it to another agency, such as the Vermont State Police.

IV. SUPERVISORY AUTHORITY

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All supervisory personnel, to include sergeants, lieutenants, the Executive Manager, the Assistant Director of Crisis, Advocacy, Intervention Programs (CAIP), and deputy chiefs, have the authority to take the following disciplinary actions against a subordinate:

- A. **Issue verbal reprimands.**
- B. **Issue written reprimands.**
- C. **Temporarily place an employee on administrative leave.** Any supervisor can order a subordinate to take temporary administrative leave. Upon observing or learning about misconduct that, in the supervisor's estimation, renders the employee incompetent or incapable, the supervisor can place the subordinate on paid administrative leave for the duration of the shift on which the conduct was revealed.
 - 1. Such leave can only extend to the next shift for which the Chief of Police or a deputy chief (or, if applicable, the Assistant Director of CAIP) is available.
- D. **Recommend further disciplinary action to the Chief of Police.**

V. EMPLOYEE RIGHTS AND OBLIGATIONS

The rights and obligations of employees who are under investigation and subject to interrogation for any reason that could reasonably lead to disciplinary action are set forth in the collective bargaining agreements, specifically the *Agreement between the City of Burlington and the Burlington Police Officers' Association* (hereafter the BPOA CBA) and the *Agreement between the City of Burlington and Local 1343 of the American Federation of State, County, and Municipal Employees* (hereafter the AFSCME CBA). **The procedure outlined in the BPOA CBA contract shall be followed for all Internal Investigations.** This procedure shall be used for any BPD employee, sworn or unsworn, regardless of the involved employee's position or role. Additionally, for all BPD employees, the following shall also apply:

- A. **Notice.** For any Administrative Review or Internal Investigation in which an employee is to be administratively interviewed, the employee will be informed in writing prior to the interview. The notice will inform the employee whether he or she is a subject or witness. The notice will include the rules or directives that are alleged to have been violated. The notice will name the assigned investigator, if available. The notice will include referral for employee wellness services. At the time of the administrative interview, a Garrity warning will be provided to the employee. Templates of the notice and the Garrity warning are included in the appendix of this directive.
- B. **Scope of interviews.** All interviews shall be limited in scope to activities, circumstances, events, conduct, or acts that pertain to the incident that is the subject of the investigation.
 - 1. Truthfulness. As stated in *DD01 Law Enforcement Role & Authority, Ethics, Department Rules*, Rule 26, employees shall truthfully answer all questions

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specifically directed to the scope of employment and operations of the BPD, to include questions asked during the course of an Internal Investigation.

- C. **Prohibitions.** No employee shall be compelled to take a polygraph, participate in a photo or live line-up, disclose financial records, or submit to medical or laboratory examinations during the course of an Administrative Review of Internal Investigation.
- D. **Prompt process.** Administrative Reviews and Internal Investigations shall be completed and findings shall be issued promptly, normally within thirty days. The time required may vary from case to case based on the nature of the allegation(s) and the complexity of the investigation. If additional time is necessary to complete the investigation, the Chief of Police may authorize an extension of up to sixty days, for a maximum time limit of ninety days from receipt of the complaint to the issuance of findings.
 - 1. Criminal investigations. For any Internal Investigation into a matter that also involves a criminal investigation into the matter, such as an officer-involved shooting or lethal force incident as described in *DD05 Statewide Policy on Police Use of Force* Appendix A, the criminal investigation—and, if applicable, prosecution—shall proceed and conclude prior to the conclusion of the BPD’s Internal Investigation. The ninety-day time limit shall not include the time required for the criminal investigation or prosecution. The BPD shall not interview an employee prior to the employee’s being interviewed by the criminal investigators.
 - a. An officer-involved shooting that is determined to be lawful and justified by the Attorney General and/or State’s Attorney, and that does not result in any complaint, will be recategorized from an Internal Investigation to a standard Use of Force Review.

VI. ADMINISTRATIVE QUALITY CONTROL

The Chief of Police shall accept all complaints. The Deputy Chief of Administration shall oversee the processing of external and internal complaints, and the execution of supervisor reviews, Administrative Reviews, and Internal Investigations.

- A. **Complaint tracking.** On a regular basis, the Deputy Chief of Administration shall report the status of all complaints and reviews directly to the Chief of Police. On a regular basis, the Deputy Chief will also communicate with a designated member of the Board of Police Commissioners. Furthermore, the Deputy Chief will provide status updates or resolutions to the Board of Police Commissioners in executive session at each monthly meeting.
- B. **Procedures.** Upon receiving a complaint from the Chief of Police, the Deputy Chief of Administration will select a supervisor to conduct the review.
 - 1. The supervisor conducting the review shall have freedom of movement and authority to examine all BPD reports and records, including audio and video records, regarding infractions of Departmental policy, procedure, or rules and regulations. A supervisor

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conducting noticed administrative interviews shall have the authority to question any BPD employee regarding infractions of BPD or City training, directives, or practices.

- a. Employees subject to administrative interview are required to answer all questions specifically directed to the scope of employment and operations of the BPD truthfully.
 - b. No employee shall be subject to retaliation for any statements made during an administrative interview; this shall not prevent the employee from being subject to discipline for conduct revealed during an administrative interview.
 2. No retaliatory measures shall be taken against any ~~supervisor~~employee who has properly conducted a review, unless in the process the law is broken and/or misconduct occurs.
 3. Upon completion of reviews, the Deputy Chief of Administration will forward all findings to the Chief of Police.
- C. **Complaint records to be confidential.** The Deputy Chief of Administration shall maintain a complete record of complaints. These records shall be maintained separate from all other BPD records and shall be strictly confidential.
- D. **Record of complaints.** The Deputy Chief of Administration, or his/her designee, will maintain a written record of each complaint.
1. That written record will at a minimum include:
 - a. The name(s) of the employee(s) involved.
 - b. The name(s) of the complainant(s), if known.
 - ~~cb.~~ The date of receipt of the allegation.
 - ~~de.~~ The date of the alleged incident, if known.
 - ~~ed.~~ The type or nature of the allegation.
 - ~~fe.~~ The name(s) of the supervisor who conducted the review.
 - ~~gf.~~ The final disposition of each complaint.
 - ~~hg.~~ How the matter was closed out with the complainant.
 2. In addition, if the complaint involves an allegation of excessive use of force, or an allegation of dishonesty or other serious misconduct, the written record will include:
 - a. A description of all action taken in response to the complaint.
 - b. An inventory of all witnesses, documents, evidence, or other information obtained or consulted in the course of the review.
- E. **Supervisor responsibility.** Supervisors are responsible for the prompt investigation of all alleged acts of misconduct or other breaches of discipline by employees they supervise. At a minimum, such allegations compel the supervisor to elevate the allegations through the chain of command.
- F. **Communication with the complainant.** The Deputy Chief of Administration shall ensure the following with regards to maintaining contact with the original complainant:
1. The Deputy Chief of Administration will advise the complainant when the complaint is received.

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2. When reasonable, the Deputy Chief of Administration will periodically inform the complainant as to the status of the complaint, including its resolution.

G. **Statistical summary.** On an ongoing basis, the Deputy Chief of Administration shall compile a statistical summary of all complaints investigated. This summary shall include the number of supervisor reviews, Administrative Reviews, and Internal Investigations and the category of disposition of each. This summary shall be made available to agency employees and the Board of Police Commissioners upon request. If a trend indicating the need for training is detected, the Deputy Chief of Administration shall make appropriate recommendations to the Training Unit and the Chief of Police and inform the Board of Police Commissioners. Additionally, each instance in which a complaint is received is an opportunity to examine practices, procedures, and conduct. Each should be examined and alterations to policy, practice, or operations incorporated swiftly as necessary.

H. **Public transparency.** Every six months, the BPD will release a summary of all Administrative Reviews and Internal Investigations that have been completed since the last release. The summary will be anonymized, but will contain the category of the complaint, a description of the complaint (including the sex and race of involved persons), and the findings, disposition, and discipline levied, if applicable.

VII. AUTHORITY AND ACTIONS OF THE CHIEF OF POLICE

The Chief of Police derives authority from the Municipal Charter of the City of Burlington. Specifically, in 24 App. VSA ch. 3, § 183 (a), the charter states:

Whenever it shall appear to the Chief that any member of said force 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 by a responsible person against such member, the Chief may investigate and, after appropriate notice and hearing, dismiss such member from the force, order a demotion 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'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 shall have the power to subpoena witnesses and to administer the oath to such witnesses. The Board of Police Commissioners 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 Chief of Police.

Furthermore, 24 App. VSA ch. 3, § 183 (d) states:

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The Chief 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 sufficient, suspend from duty without pay any member of the police force for a period not to exceed 14 days.

By practice and by this directive, the Chief of Police shall accept all complaints, direct that complaints be reviewed, assess those reviews, issue findings based on the reviews, and, as appropriate, levy non-disciplinary action or disciplinary action.

- A. **Totality of circumstance.** It is not practical, nor possible, to establish a firm and set penalty and corrective measure for every conceivable situation necessitating disciplinary action. Extenuating, mitigating, or aggravating circumstances and other factors will govern the severity of disciplinary action.
- B. **Administrative leave.** Unlike suspension without pay, administrative leave is an employment status that continues to remunerate the employee at his or her normal base compensation. As described in the *City of Burlington Comprehensive Personnel Policy Manual*, in Section 6.17, the Chief of Police can place a BPD employee on paid administrative leave from duty at any time that the Chief believes it is in the best interests of the BPD or of the employee that the employee be placed on a leave from his or her duties. Examples of reasons for a paid administrative leave include but are not limited to: the need to conduct an Internal Investigation; the need for criminal charges to be pursued; the need to curtail the subject employee's access to Criminal Justice Information Systems (CJIS) while under investigation. Furthermore, paid administrative leave may be warranted if, in the judgment of the Chief of Police, the employee's continued presence at work is detrimental to the efficiency of the BPD, the wellbeing or morale of other BPD employees, or the best interests of the public.
- C. **Findings.** The Chief of Police shall:
 1. Assess every review to determine the appropriate disposition.
 2. Make a finding, using the following categories of disposition:
 - a. Unfounded. The act or acts described in the complaint did not occur or did not involve BPD employees.
 - b. Exonerated. The act or acts described in the complaint did occur, but were justified, lawful, and proper.
 - c. Non-sustained. The review failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.
 - d. Sustained. The review disclosed sufficient evidence to prove the allegations made in the complaint.
 - e. Non-involved. The review established that the individual named in the complaint is not involved in the alleged incident.
 3. The Chief of Police or his/her designee shall make reasonable efforts to notify the complainant, in writing, of the outcome of the review.
 4. At the conclusion of any supervisor review that results in a "sustained" disposition, or at In the event of a "sustained" disposition following a supervisor review, the Chief of

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~~Police or Deputy Chief of Administration will notify the subject employee, in writing, of the disposition.~~

5. ~~At the conclusion of any Administrative Review or Internal Investigation, the Chief of Police or Deputy Chief of Administration will notify the subject employee, in writing, of the disposition. The employee will have the right to confront the evidence in the review and seek redress or reevaluation from the Chief of Police.~~

D. **Loudermill hearing.** Upon issuing a “sustained” disposition for an Internal Investigation for which the discipline is likely to include suspension, demotion, or dismissal, the Chief of Police will afford the subject employee with a Loudermill hearing. In keeping with *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), this is a hearing that allows the employee to explain or justify his or her conduct, or rebut evidence, or provide a counternarrative to the case. The Chief will deliver a Loudermill notice to the employee and set a hearing within a reasonable time. The notice will include a specific description of the charges, an explanation of the BPD’s evidence, and a preliminary disciplinary proposal. The hearing permits the subject employee to confront the allegations, correct any errors in the Internal Investigation, and address the type or level of discipline being considered.

E. **Deliberation.** When considering a disposition and possible discipline for Administrative Reviews or Internal Investigations, the Chief of Police shall consult with the Mayor, and/or the City Attorney, and/or the Director of Human Resources as necessary. Such consultation is required for any complaint that involves serious bodily injury to any participant, or that ~~the Chief of Police believes has occasioned~~ raises significant public concern.

Commented [MJ9]: Commissioner Hanson

VIII. DISCIPLINE

After issuing findings, the Chief of Police shall determine appropriate discipline. In certain instances, described below in IX C 2, the Chief of Police must share a *recommendation* for discipline with the Police Commission prior to *finalizing* that discipline. The BPD strives to engage in progressive and corrective discipline. Whenever it is necessary to discipline an employee, it shall be done fairly and in such a manner as not to embarrass the employee in front of the public or fellow employees.

- A. **Continuum of response.** Outcomes of reviews or investigations may result in a continuum of responses that includes education and training, performance counseling, corrective action, or discipline. The continuum includes but is not limited to (responses may include more than one of the items in the continuum in some instances):
1. Verbal performance counseling or coaching
 2. Training/re-training
 3. Written performance notation/ Coaching Report
 4. Written counseling/“Performance File Entry”
 5. Referral to professional counseling, such as the Employee Assistance Program
 6. Written reprimand—the first level of “discipline”

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7. Reassignment
 8. Suspension or forfeiture of pay
 9. Demotion
 10. Dismissal
- B. **Training and corrective discipline.** The BPD recognizes and encourages the use of training as an effective method of improving employee productivity, morale, and adherence to policies. The BPD agrees with the tenets of progressive and corrective discipline, where appropriate.
- C. **Severity of discipline.** The severity of a disciplinary action shall be commensurate with the cause of the action. The specific types of disciplinary measures to be taken against an employee are defined in the applicable collective bargaining agreement or the City's Personnel Policy.
- D. **Verbal counseling.** The BPD encourages supervisors to verbally counsel and coach employees for minor transgressions, when appropriate. Counseling shall not be considered a disciplinary measure and may not need to be documented. There may be occasions, however, when a supervisor will document an informal verbal counseling in the employee's performance file. This notation is not discipline. It is merely a record of the issue made available to other supervisors should there be additional transgressions of this same nature. The documentation will be on the BPD's triplicate form entitled "Employee Performance Entry." One copy is provided to the employee, one copy is sent to the Deputy Chief of Administration, and one copy remains in the performance file until it is removed. Any action taken beyond informal employee counseling and that documentation shall be considered a disciplinary action and must be consistent with the provisions of this directive and the applicable contract or policy.
- E. **Purpose of disciplinary decisions.** It is critical that a system of discipline be established that contributes to minimizing abuse of police authority and promotes the BPD's reputation for professionalism. Each employee must understand and be guided by the BPD's standards. It is recognized and understood that employees will make errors in judgment from time to time in carrying out their responsibilities. While each error in judgment offers an opportunity for the BPD and the employee to learn, it is also understood some errors will have greater consequences than others for the public, the BPD, and the employee. The BPD has an obligation to make its expectations as clear as possible to its employees. The BPD has an equal obligation to make the consequences for failing to meet those expectations clear.
- F. **Factors in disciplinary decisions.** Described here are the factors that will be considered in the disciplinary decision process for alleged breaches of policy or rules.
1. Employee motivation. The BPD exists to serve the public. ~~One factor in examining an employee's conduct will be whether or not the employee was acting in the public interest will be a mitigating or aggravating factor. An employee who violates a policy or procedure in an effort to accomplish a legitimate police purpose, and who~~

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~~demonstrates an understanding of the broader public interest inherent in the situation, will be given more positive consideration in the determination of consequences than one who was motivated by personal interest. From time to time it may be difficult to distinguish between public and personal interest.~~ As an example, arresting a dangerous criminal is in the public's interest. Violating ~~the a~~ criminal's Constitutional rights ~~in order to do so~~ is not in the public's interest. The greater public interest is for the BPD to carry out its responsibilities while protecting the public's Constitutional guarantees. ~~But if an employee attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures, the desire to encourage creativity may carry significant weight in determining any discipline that might result.~~

2. Degree of harm. The degree of harm that an error causes is also an aspect in deciding the consequences of an employee's conduct. Harm can be measured in a variety of ways, ~~including . It can be measured in terms of the~~ monetary cost to the department and community. ~~For example, an error that causes significant damage to a vehicle could be examined in light of the repair costs. Harm can also be measured in terms of the personal physical injury to a person, or the error causes, such as the consequences of an unnecessary use of force. Another way in which harm can be measured is the impact of the error on public confidence. An employee who engages in criminal conduct could affect the public confidence in the BPD if the consequences do not send a clear, compelling message that the conduct will not be tolerated.~~
3. Employee experience. ~~The level of experience of employees is a factor. A relatively new employee (or an experienced employee in an unfamiliar assignment) may receive consideration when judgment errors are made. Conversely, an employee who makes a judgment error that would not be expected of one who has a significant amount of experience may receive more serious sanctions.~~
4. Intentional and unintentional errors. ~~Errors can be classified as intentional or unintentional.~~
 - a. An unintentional error is an action or decision that turns out to be wrong, but based upon the information available at the time it was taken, seemed to be in compliance with policy and the most appropriate course. Unintentional errors also include those momentary lapses of judgment or acts of carelessness that result in minimal harm. Employees will be held accountable for these errors but the consequences will be more corrective than punitive unless the same errors persist.
 - b. An intentional error is an action or a decision that an employee makes that is known (or should be known) to be in conflict with law, established training, or procedures, rules, or policy. Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors. Within the framework of intentional errors there are certain behaviors that are entirely inconsistent with the responsibilities of the police profession. These include lying, theft, physical abuse of citizens, and other equally serious breaches of the trust placed in members of the police profession. The nature of the police responsibility requires that police officers be truthful. ~~It is recognized, however, that it is sometimes difficult to determine if one is being untruthful.~~ An employee will face discharge from the BPD when it is clear that the

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employee is intentionally engaging in an effort to be untruthful. ~~It is also a serious breach to have engaged in theft, physical abuse of citizens, or other criminal behavior.~~

5. Employee's past record. To the extent allowed by law and policy, an employee's past record will be taken into consideration in determining the consequences of a failure to meet the BPD's expectations. ~~An employee who repeatedly makes errors can expect the consequences of this behavior to become progressively more punitive. An employee whose past record reflects hard work and dedication to the community and BPD will be given due consideration in the determination of any disciplinary action.~~

- G. **Fair and consistent.** There are often circumstances that may have contributed to errors of judgment or poor decisions that need to be considered when determining the appropriate consequences for conduct found to be improper. Disciplinary action must be imposed in a consistent and fair manner. Consistency is defined as holding everyone equally accountable for unacceptable conduct. Fairness is defined as understanding the circumstances that contributed to the conduct while applying the consequences in a way that reflects this understanding. In order to ensure that employees are treated in a consistent and fair manner, the application of consequences for conduct that is not in keeping with the BPD's expectations will be based upon a balanced consideration of factors. Following the careful consideration of all applicable factors in any disciplinary review, every effort will be made to determine the consequences that consistently and fairly fit each specific incident.

IX. BOARD OF POLICE COMMISSIONERS

By charter, the Board of Police Commissioners is the appellate body for BPD employees who grieve discipline and is the approval body for changes, modifications, or additions to the BPD's rules and regulations. By directive, the Board of Police Commissioners also has a robust monitoring role. The Police Commission shall receive copies of all external and internal complaints made against BPD employees. Complaints filed online will be immediately transmitted to the Police Commission via email forwarding, and written complaints will be transmitted to the Police Commission by the Deputy Chief of Administration within five business days of receipt.

- A. **Status updates.** The Chief of Police and Deputy Chief of Administration will provide status updates about complaints against employees at the first Police Commission meeting following receipt of the complaint, unless the matter is of such urgency that a special meeting is required. To preserve employee privacy, complaints shall only be discussed in executive session.
- B. **Records and video.** At the request of any member of the Police Commission who has completed a fingerprint-supported background check and required CJIS training, the Chief of Police will make the written record of any completed supervisor review, Administrative Review, or Internal Investigation available. Other materials such as body-worn-camera footage and dispatch audio may also be shared, if permitted by law. The material may not be shared with a Police Commissioner who has not met the CJIS

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requirements. The material is not for public disclosure, and will only be discussed in executive session.

1. Statements made in administrative interviews by employees who are the subject of a review can only be shared with the Police Commission when it acts as an appellate body, as per the BPOA CBA, and will be redacted unless being used in an appeal.
2. Police Commissioners have AXON accounts through which they can watch body-worn-camera footage of any incident that is the subject of a complaint, unless the incident is otherwise controlled by an outside law-enforcement entity or the Vermont Judiciary, particularly the Family Division. Random audit of body-worn-camera footage is prohibited.
3. If a complaint has been referred by the BPD to an outside entity such as the Vermont State Police or Chittenden County State's Attorney's Office for investigation of possible criminal conduct, the materials will be made available to the Police Commission if the outside entity approves and determines that the materials may be disclosed to the Police Commission without adversely affecting any possible prosecution.

C. **Summaries.** Upon issuing findings and/or determining a disposition and resolving a complaint, the Chief of Police will summarize the findings and disposition or recommended disposition for the Police Commission in executive session.

1. For lower- and mid-level complaints, the Chief of Police will provide a verbal or written summary of the complaints and their status or disposition in executive session.
2. For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that is likely to result in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief of Police will provide the Police Commission with a full verbal briefing of the allegations and the recommended disposition of the case in executive session.

D. **Police Commission response.** After receipt of the summary described above, the Police Commission may:

1. Accept the Chief's summary and recommended action in full or in part;
2. Request additional information;
3. Request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, disposition (including recommending a range of sanctions for the misconduct), or other aspect of the matter; or
4. Postpone action to a later date, but no later than fourteen (14) days from the date of initial receipt of the summary, and then select from D 1, 2, or 3 above.

E. **Chief of Police response.** The Chief of Police may accept or reject the Police Commission's recommendations. If the Chief rejects the Police Commission's

Commented [MJ10]: Commissioner Hanson suggested having D only apply to C.2. (above).

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recommendations, the Chief shall explain to the Police Commission why the recommendations were not accepted.

1. If a majority of the Police Commission disagrees with the Chief's decision, the Police Commission Chair shall report this to the Mayor. Police Commission members should take care to avoid unauthorized disclosure of confidential information. To that end, any Commissioner may consult with the City Attorney's Office to obtain advice related to, among other things, the use and disclosure of confidential information.

DESCRIPTION OF REVIEW PANEL MIGHT GO HERE, IF IT IS CREATED BY COUNCIL

- F. **Misconduct by the Chief of Police.** Whenever the Police Commission becomes aware of allegations of misconduct by the Chief of Police, or if the Police Commission has concerns about the performance of the Chief of Police, the Chairperson of the Police Commission shall report this to the Mayor in a timely manner. In the event that the Chief of Police has engaged in misconduct pursuant to 20 VSA § 2401, also known as Act 56, the Chairperson of the Police Commission shall report this to the Chairperson of the Vermont Criminal Justice Council.

X. ACT 56

Conduct that falls within the categories of "Category A conduct," "Category B conduct," or "Category C conduct," as defined in 20 VSA § 2401, also known as Act 56, must be treated in accordance with that statute. The Chief of Police will report such conduct appropriately to the Vermont Criminal Justice Council.

XI. APPEALS

Any appeal relative to disciplinary action shall be handled by the Board of Police Commissioners, according the Municipal Charter of the City of Burlington, 24 App. VSA ch. 3, § 190 (a): "The Board of Police Commissioners 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 Chief of Police."

XII. DISMISSAL

All dismissals shall be in accordance with the City Charter. If employee misconduct results in dismissal of a non-probationary employee, it shall be the responsibility of the Chief of Police or his/her designee to provide the information regarding the dismissal to the affected employee, including: the effective date; reason; status of benefits; and information regarding the content of the employee's personnel file as it relates to the dismissal.

XIII. RETENTION OF RECORDS

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- A. **Performance file entries.** Entries in performance files may be used for progressive discipline for a maximum of two (2) years from the date of entry. Those are generally non-disciplinary matters such as short notations of verbal counseling or training; performance plans; letters of counseling or coaching; or other non-disciplinary documents.
- B. **Disciplinary entries in the personnel file.** Absent additional discipline being imposed during the time frames noted below, the following timelines are established for relevance in establishing progressive discipline:
1. Letters of reprimand and any other discipline short of suspension are relevant for a maximum of two (2) years from the date of the initiation of any supervisor review, Administrative Review, or Internal Investigation of the event/conduct.
 2. Disciplinary actions resulting in a suspension are relevant for a maximum of four (4) years from the date of the initiation of any Internal Investigation of the event/conduct.
 3. Records relating to significant discipline that does not result in termination but that triggers a suspension of one week or more—including but not limited to cases involving sexual harassment, harassment based on any protected category defined in 21 V.S.A. 495, significant issues related to response to resistance/use of force, any criminal activity, and veracity—may be retained permanently.

XIV. ADDITIONAL SOURCES & REFERENCES

Agreement between the City of Burlington and the Burlington Police Officers' Association

Agreement between the City of Burlington and Local 1343 of the American Federation of State, County, and Municipal Employees

Comprehensive Personnel Policy Manual for the City of Burlington and the Burlington Electric Department

Reviewed and adopted by the Burlington Police Commission on March XX, 2024.

Jon Murad, Chief of Police

xx March, 2024
Effective Date

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APPENDIX

Appendix 1. Citizen's Complaint Form

Appendix 2. Citizen Complaints Process

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Appendix 3. Citizen Complaints, Supervisor Reviews, Administrative Reviews & Internal Investigations Flow Chart

Appendix 4. Notice of Administrative Review / Internal Investigation

Appendix 5. Notice of Administrative Interview / “Garrity Warning”

Appendix 6. Role of the Burlington Police Commission in Reviewing Complaints Against BPD Employees, August 2020

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**POLICE DEPARTMENT
CITY OF BURLINGTON**

APPENDIX 1

CITIZEN COMPLAINT PROCESS

The Burlington Police Department (BPD) and City of Burlington Police Commission (the "Police Commission") are dedicated to ensuring the public safety of all persons in the confines of our City. To that end, we are committed to earning and maintaining the public trust. This commitment led us to develop a process to address complaints from community members about how BPD accomplishes its mission of public safety.

As part of the process, we encourage community members to report allegations of improper conduct on the part of BPD's sworn officers and non-sworn staff. These complaints, which are vital to ensuring BPD's legitimacy and effectiveness, will be reviewed and investigated in a prompt, open, and expedient fashion that includes review by the Police Commission, a group of citizen volunteers.

Any person may make a complaint by submitting the attached form in person or by mail to the BPD (One North Avenue, Burlington, VT 05401). If you prefer, you may submit the form to a City Councilor, <https://www.burlingtonvt.gov/CityCouncil>, the Mayor's Office, <https://www.burlingtonvt.gov/Mayor>, or in person to the Executive Manager, Shannon Trammell, at One North Avenue, strammell@bpdvt.org, or (802) 540-2107.

We encourage you to keep a copy of the completed complaint form for your reference. If you submit the form in person, we would be happy to make a photocopy for you at that time. When you submit the form, your complaint will be assigned a reference number so that you may track your complaint. You will also be notified of the disposition of your case when the investigation is complete. If you choose to remain anonymous, we will not be able to follow up with you regarding your submission.

Please feel free to contact Shannon Trammell in the office of the Chief of Police, at strammell@bpdvt.org or (802) 540-2107, during normal business hours if you have any questions regarding this complaint process.

Sincerely,

Jon Murad
Chief of Police
Burlington, Vermont

Shakuntala Rao, Co-Chair
Mary Cox, Co-Chair
City of Burlington Police Commission

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POLICE DEPARTMENT
CITY OF BURLINGTON

APPENDIX 1

CITIZEN'S COMPLAINT FORM

You are not required to provide your name or any identifying information. However, please be aware that the complaint investigator's ability to thoroughly investigate a complaint could be impeded if the investigator has no means to follow up with a complainant. If you wish to remain anonymous, please consider providing an anonymous email address below. Please select your reporting preference.

ANONYMOUS? _____ (leave contact info blank) INCLUDE MY CONTACT INFORMATION: _____

YOUR NAME: FIRST _____ LAST _____

MAILING ADDRESS: _____

PRIMARY PHONE #: _____ SECONDARY PHONE #: _____

EMAIL ADDRESS: _____

DATE OF BIRTH: _____

The Burlington Police Commission is collecting information on the age, race/ethnicity and gender of complainants in order to better understand the needs and experiences of community members. Please complete as much information as you feel comfortable providing.

AGE: _____

GENDER: ☐ Female ☐ Male ☐ Non-binary/third gender ☐ Transgender

☐ Prefer not to say ☐ Prefer to self-describe: _____

RACE/ETHNICITY: ☐ Asian/Pacific Islander ☐ Black/African American

☐ Hispanic ☐ Native American ☐ White/Caucasian ☐ Other: _____

DO YOU HAVE A DISABILITY? Yes No

INCIDENT DETAILS

DID THE INCIDENT INVOLVE A BURLINGTON, VT POLICE OFFICER? ☐ Yes ☐ No

DATE OF INCIDENT: _____ TIME OF INCIDENT: _____

LOCATION OF INCIDENT: _____

Enter the address or nearest intersection where the incident took place.

OFFICER(S) INVOLVED (Enter the name(s) and/or badge number(s) of officer(s) involved. If unknown, enter physical descriptions):

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**POLICE DEPARTMENT
CITY OF BURLINGTON****APPENDIX 1**

DESCRIPTION OF INCIDENT: Please describe the incident in detail. Use additional paper if necessary.

DESCRIBE ANY PHYSICAL INJURIES OR TRAUMA SUSTAINED DURING THE INCIDENT:

WERE ANY INJURIES OR TRAUMA CAUSED BY POLICE ACTION? If so, please describe.

WITNESSES TO INCIDENT:

NAME: _____ ADDRESS: _____ PHONE: _____

NAME: _____ ADDRESS: _____ PHONE: _____

NAME: _____ ADDRESS: _____ PHONE: _____

AUDIO/VIDEO RECORDINGS. Are you aware of any audio or video recordings that may have captured the incident? If so, please provide details. _____

SIGNATURE: _____ DATE: _____

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COMPLAINT RECEIVED;
INFORM COMMISSION

CITIZEN COMPLAINTS PROCESS

APPENDIX 2



[Article 65 §190](#) of the Burlington City Charter vests disciplinary authority for members of the police department in the Chief of Police. When the Burlington Police Department receives a [citizen complaint](#) about an employee's conduct, [Department Directive DD40](#) states the Chief of Police shall cause that complaint to be investigated as soon as practical. By [policy agreement](#), the Chief will report to the independent Burlington Police Commission on all complaints.

INJURY TO PERSON?
PUBLIC CONCERN?
INFORM MAYOR

According to [Mayoral Executive Order](#), when a police officer uses force that results in injury to any person or that raises significant public concern, the Chief of Police will formally review the situation with the Mayor and seek the Mayor's concurrence with the Chief's disciplinary determinations. The Chief must obtain the Mayor's concurrence or other final recommendation before reviewing the case with the Police Commission and must share the Mayor's views with the Commission.

SERIOUS COMPLAINT?
VERBAL BRIEF TO
COMMISSION

For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that results in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief will provide the Police Commission with a full verbal briefing of the allegations, the Mayor's views (if applicable), and the Chief's recommended disposition of the case in executive session.

COMMISSION ASSESSES
CHIEF'S DISPOSITION

After receipt of the verbal briefing, the Police Commission may:

- accept the Chief's report and recommended action in full or in part;
- request additional information;
- request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, disposition, or other aspect of the matter, or
- postpone action to a later date, but no later than 14 days from the date of initial receipt of the report

CHIEF FINALIZES
DISPOSITION

The Chief may accept or reject the Police Commission's recommendations, but must explain any rejection. If a majority of the Police Commission disagrees with the Chief's decision, the Police Commission Chair shall report this to the Mayor.

20 VSA § 2401?
CHIEF REPORTS TO VCJC

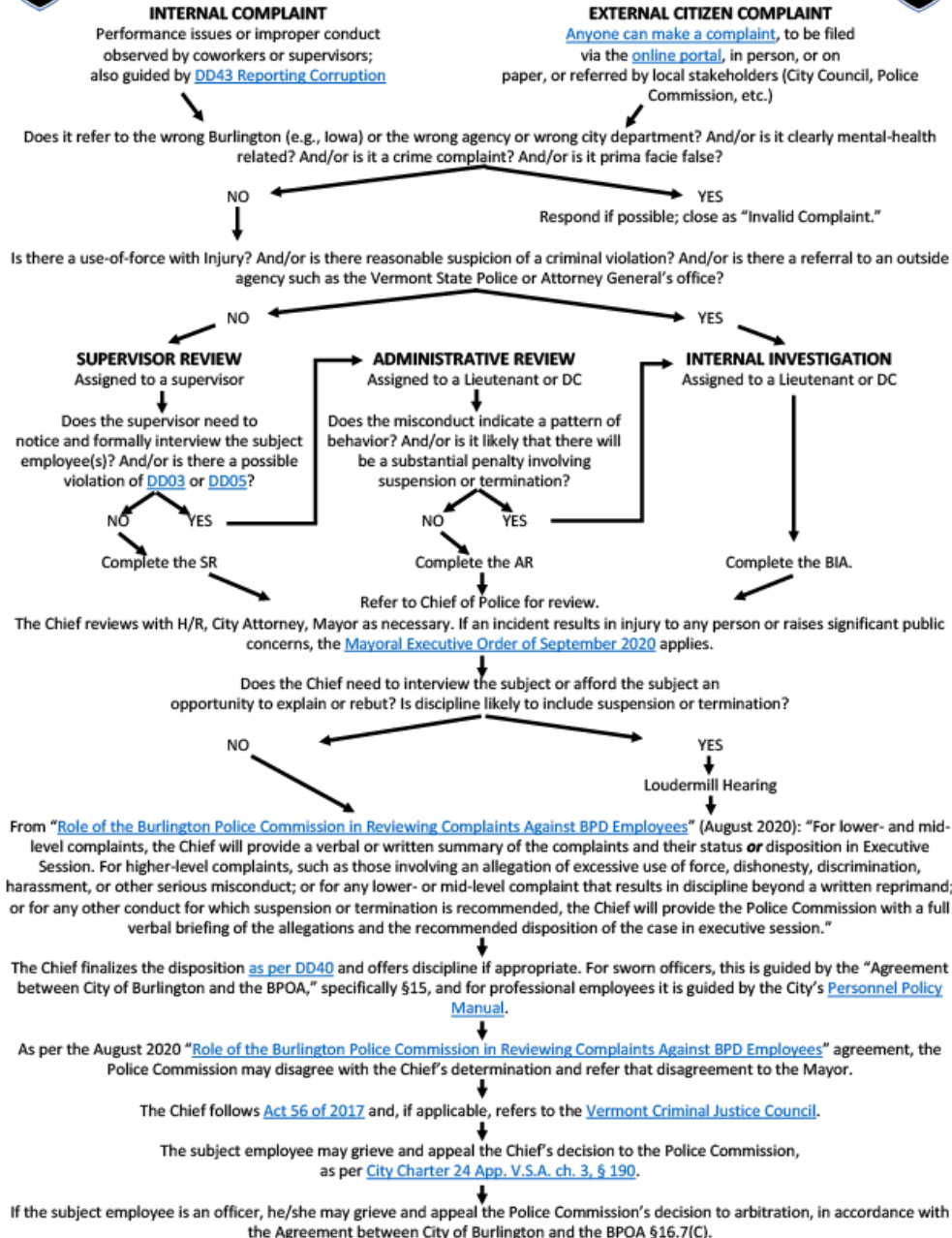
As per the Vermont Criminal Justice Council and Vermont's Act 56, if the conduct alleged in the complaint meets the definitions of Category A, Category B, or Category C conduct in 20 VSA §2401, the Chief will comply with the duty to report described in 20 VSA §2403.

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CITIZEN COMPLAINTS, SUPERVISOR REVIEWS, ADMINISTRATIVE REVIEWS & INTERNAL INVESTIGATIONS

APPENDIX 3



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**POLICE DEPARTMENT
CITY OF BURLINGTON**

APPENDIX 4

**NOTICE OF ADMINISTRATIVE REVIEW / INTERNAL INVESTIGATION
CONFIDENTIAL – DELIVERED BY HAND**

TO: [employee name]
FROM: [supervisor name]
DATE: [date]
RE: Administrative Review #XX of 202X —or— Internal Investigation #XX of 202X

You are hereby notified that you are a [WITNESS or SUBJECT] in an Administrative Review or Internal Investigation. The allegations are as follows:

*Allegation of a possible violation of [Rule XX – Name of Rule]
Allegation of a possible violation of [Rule XX – Name of Rule]*

The investigator anticipated to be assigned to this is:

[name of assigned supervisor]

Additional orders and instructions related to this investigation include:

Any retaliation of hostile treatment toward any employee involved in this matter will be grounds for serious additional discipline, up to and including dismissal.

The Department would like to take this opportunity to remind you of the services available to all employees during times of increased stress or need via the Employee Assistance Program (EAP) or the Vermont Center for Responder Wellness (VCRW). Both are confidential services. The EAP program can be reached by calling 1-800-287-2173; Sonny Provetto at the VCRW can be reached at (802) 377-5137.

I acknowledge receipt of this memorandum: _____

Signature of supervisor making notification / date: _____

Please note that personnel subject to internal investigation have the right to have an attorney or other responsible representative of their choice present during their interview.

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**BURLINGTON POLICE DEPARTMENT
ADMINISTRATIVE INTERVIEW NOTIFICATION
Garrity Warning**

APPENDIX 5

Employee to be interviewed: _____

Is the employee a **WITNESS** or **SUBJECT** ? *circle one*

Location and date of interview: _____

Before asking any questions, I am advising you of the Burlington Police Department's Administrative Review / Internal Investigation policy and your responsibility as an employee of the BPD.

An Administrative Review or Internal Investigation is about a violation of the Burlington Police Department's Rules and directives, not a criminal matter.

The purpose of this administrative interview is to ask for responses that will help in determining whether disciplinary action is warranted. The answers furnished may be used in disciplinary proceedings that could result in administrative action against you and any other employee of the Burlington Police Department, including reprimand, demotion, suspension, or dismissal.

All questions about the performance of official duties, including workplace conduct, must be answered completely and truthfully. Disciplinary action, including dismissal, may be undertaken if you refuse to answer completely and truthfully. See Department Directive 01 Rule 16 *Conduct Unbecoming* and Rule 26 *Truthfulness*.

Although this review is not about a criminal matter, you have a right to remain silent regarding any issues that may implicate you in a crime. Doing so will end the administrative interview and the matter at hand will be referred to a criminal investigation. No answers given or any information gained in this administrative interview may be admissible against you in any criminal proceeding.

You may have the presence of an attorney or anyone of your choice on a consulting basis—including, if applicable, a representative of your union. However, there will be no interference with the administrative interview by any party.

This administrative interview will be recorded. You are entitled to a copy of the recording.

Do you understand what I have said? _____

Do you understand that by not answering my questions you would be violating Department Directive 01 Rule 16 *Conduct Unbecoming*, i.e. the failure to cooperate with an Internal Investigation? _____

Acknowledgement of Administrative Inquiry Procedures:

I have had the above statement of the Administrative Interview Procedures read to me. I fully understand my responsibilities as an employee of the Burlington Police Department.

SIGNATURE: _____ DATE: _____ TIME: _____

INVESTIGATOR'S SIGNATURE: _____ DATE: _____ BADGE # _____

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BURLINGTON POLICE COMMISSION POLICY**APPENDIX 6****Role of the Burlington Police Commission in Reviewing Complaints Against BPD****Employees****Adopted August 25, 2020**

Purpose: The purpose of this policy is to support principles of fair and impartial policing within the City of Burlington Police Department by adopting a procedure that defines the role of the Burlington Police Commission in reviewing complaints against agency members.

Policy:

1. When a complaint is received by the Burlington Police Department about the conduct of an employee of the Burlington Police Department, the Chief of Police shall cause that complaint to be investigated as soon as practical by an individual or individuals with no interest in or attachment to the issue or officer(s) being investigated. When a complaint is received by members of the Burlington Police Commission, the member of the Burlington Police Commission should encourage the person making the complaint to submit it via the Burlington City website or should personally take the complaint, attempting to capture all the information otherwise contained in the Citizen's Complaint Form. [See Appendix A]
 - a. All complaints, whether generated externally or internally, are referred to as Citizen's Complaints.
 - b. All Citizen's Complaints are documented on a spreadsheet maintained by the Deputy Chief of Administration, or designee.
 - c. Lower-level and some mid-level complaints that are able to be resolved quickly and at first level of supervision, remain as Citizen's Complaints.
 - d. Some mid-level complaints may be escalated to an Administrative Review (AR). An AR is designed to determine if a complaint needs to be elevated to a Bureau of Internal Affairs investigation or if it is able to be handled without a robust personnel investigation.
 - e. Higher-level complaints will either be an Administrative Review or will be escalated to a Bureau of Internal Affairs investigation.
 - f. Lower-level, mid-level, and higher-level complaints will be categorized consistent with the Burlington Police Officers' Association Contract, Article XV, section 15.2. [See Appendix B]
2. The Deputy Chief of Administration, or his/her designee, will maintain a written record of each complaint. That written record will at a minimum include:
 - The name(s) of the employee(s) involved.
 - The date of receipt of the allegation.
 - The date of the alleged incident, if known.
 - The type or nature of the allegation.

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- The name(s) of the person(s) who investigated.
- The final disposition of each complaint.
- How the matter was closed out with the complainant.

APPENDIX 6

In addition, if the complaint involves an allegation of excessive use of force, or an allegation of dishonesty or other serious misconduct, the written record will include:

- All action taken in response to the complaint.
- Identification of all witnesses, documents, evidence, or other information obtained or consulted in the course of the investigation.

3. The written record of each complaint will be considered confidential. Each Commissioner shall have access to the written records of all complaints upon request to the Chief, subject to the Vermont Public Records Act, and the Burlington Police Officers' Association agreement. Further information may be available to the Commissioner receiving the records upon the completion of a fingerprint-supported background check and the execution of a confidentiality agreement.
4. The Chief will report to the Police Commission on all complaints against members of the department as follows:
 - Updates about complaints against employees will be shared with the Commission in Executive Session at the first meeting following receipt of the complaint, unless the matter is of such urgency that a special meeting is required. Status updates on the progress of complaints under investigation will be provided to the Commission, as appropriate, and further detail and access to reports/video/etc shall be provided to the Police Commission in Executive Session at the first meeting after the investigation has been completed.
 - For lower- and mid-level complaints, the Chief will provide a verbal or written summary of the complaints and their status or disposition in Executive Session.
 - For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that results in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief will provide the Police Commission with a full verbal briefing of the allegations and the recommended disposition of the case in executive session.
 - The Chief of Police, or his/her designee, will report to the Police Commission in Executive Session on a monthly basis regarding any Use-of-Force incidents. The update shall include demographic data about the officer(s) and subject(s) such as gender, age, and race, and also provide a description of incident.

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APPENDIX 6

- At the request of any member of the Police Commission, the Chief will make the written record available for Executive Session review by the Police Commission, as well as any audio or video footage, written materials, evidence, or other information related to the allegation.
- The Chief of Police, in consultation with the States Attorney's Office, will make the determination of if a complaint needs to be referred outside the Department for investigation of possible criminal conduct. If the complaint has been referred outside of the Department for investigation of possible criminal conduct, the materials will be made available to the Police Commission in Executive Session once a determination has been made that the materials may be disclosed to the Police Commission without adversely affecting any possible prosecution.

5. After receipt of the report described above, the Police Commission may:

- accept the Chief's report and recommended action in full or in part;
- request additional information;
- request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, disposition (including recommending a range of sanctions for the misconduct), or other aspect of the matter, or
- postpone action to a later date, but no later than 14 days from the date of initial receipt of the report.

6. The Chief may accept or reject the Police Commission's recommendations. If the Chief rejects the Police Commission's recommendations, the Chief shall explain to the Police Commission why the recommendations were not accepted. If a majority of the Police Commission disagrees with the Chief's decision, the Police Commission Chair shall report this to the Mayor. Police Commission members should take care to avoid unauthorized disclosure of confidential information. To that end, any Commissioner may consult with the City Attorney's Office to obtain advice related to, among other things, the use and disclosure of confidential information.

7. The Chief of Police is responsible for reporting any misconduct of Burlington Police Department employees that falls under 20 VSA 2401 to the Vermont Criminal Justice Training Council.

8. Whenever the Police Commission becomes aware of allegations of misconduct by the Chief of Police, or if the Police Commission has concerns about the performance of the Chief of Police, the Police Commission Chair shall report this to the Mayor in a timely manner. In the event that the Chief of Police has engaged in misconduct pursuant to 20 VSA 2401, the Police Commission Chair shall report this to the Chair of the Vermont Criminal Justice Training Council.

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APPENDIX 6

9. The Police Commission shall report to the Burlington City Council twice ~~each year regarding~~ this policy. The report shall include a redacted summary of the number, type, and disposition of complaints reported to the Police Commission.

END APPENDIX

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DD 40 Status of CNA Recommendations

CNA Recommendation	Status in Revised DD 40
1.3.1: Document all complaints.	Addressed Section II A.
1.17.1: Completely re-write DD 40. Establish separate internal affairs dept and utilize specific not general investigators	DD 40 has been completely re-written. Investigation processes and role of specific investigators defined. Chief's explanation that the size of BPD and volume of complaints not sufficient to establish separate internal affairs dept. and the Deputy Chief of Administration (DCA) performs these duties. This reflects Commission's experience reviewing complaints and the re-written provisions reasonably address the recommendation.
Finding 1.18: Chief currently serves as adjudicator and keeper of complaints. It appears complaints are only investigated when directed by chief, making it appear the chief is intake for complaints.	Addressed throughout Section VI. Procedures describe authority delegated to DCA in receiving and referring all complaints to chief and overseeing the complaints process. Chief's authority in deciding disposition based on investigator recommendations and chief's quality control duties are defined. The Commission has identified language in the DD that could be interpreted as inconsistent with the overall process described in Section VI. Commission provided suggestions to address this language
1.18.1: Create policy that defines complaints handled by first line supervisors and referred to internal affairs.	Addressed in Section III
1.18.2: BPD should consider instituting a civilian review board rather than chief serving as final authority on facts and discipline.	Addressed. Burlington Police Commission established and conducts civilian review. City Council exploring changes to the city charter to establish a panel with final authority on facts and discipline.
1.18.3: Establish specific Internal Affairs section	This recommendation encompasses this and other issues included in finding 1.18. These have been addressed as described above
1.19.1: Commander of Internal Affairs should report directly to the chief.	This recommendation relates to the finding that the chief determines whether an investigation is necessary and then forwards to the deputy chief necessary information to initiate investigation. DCA reports directly to the chief. The other issues addressed as described above.
1.20.2: Add requirement that employees report arrest or contact with outside law	This recommendation more directly pertains to DD 01 although arrest or contact with

enforcement agencies while off-duty, in addition to reporting civil law suites against them for actions on-duty	outside law enforcement agencies would likely result in an internal complaint against the employee
2.4.1 Identify other means for citizens to file a complaint	Addressed in Section II A. 2
2.7.1: BPD should develop a policy that directs how, who and how long to conduct an internal affairs investigation.	Timeline for conducting investigation specifically addressed in Section V. D. Other issues addressed in Sections III and IV
Finding 2.8 Not all BIA investigations cite a rule violation. Recommendation 2.8.1: Cite rule or policy violations	Commission's experience has been that internal investigations have cited a policy or rule violation
Finding 2.9 Seriousness of the violations are not described. Recommendation 2.9.1: Identify and explain violations of rules and policies	Commission has not seen the investigations identified by CNA as not describing violations. Commission experience has been that rules and policy violations have been explained.
2.9.2 Investigator must be willing to identify and enforce rule/policy violations	See 2.9.1 above
2.9.3: Internal investigation process details every step in the process, including who in the Dept. will conduct investigation, officer conduct and care after an incident, document and evidence collection, witnesses, etc.	Commission is not aware of systemic investigation issues identified in the recommendation. Commission reviews individual investigations and advises on their sufficiency in justifying the disposition.
2.10.1 Policy should specify who conducts internal investigations. Each investigation should be conducted the same way to eliminate question of favoritism/bias	Addressed in Section III
2.11.1 Regardless of employment status, investigations should be completed. It appears investigations were not completed when an employee resigned, enabling the employee to apply for employment in another jurisdiction because the investigation has not been forwarded.	Language addressing this issue not identified
2.11.2 Should have a policy stating that an officer will not be recommended for a new position if does not participate in an investigation and the dept. will notify new employer of their unwillingness to participate.	Language addressing this issue not identified
4.9.3 This recommendation stems from CNA's review of two Officer Involved Shooting Incidents (OIS). The recommendation mirrors recommendation 2.10.1 above.	Commission has had little experience with OIS. Section V. D. 1 states that OIS determined to be lawful and justified by the Attorney General and/or States Attorney and that does not result in any complaint, will be recategorized from an Internal Investigation to a standard Use of Force Review.

Commissioner Keefe's Comments on Section IX of Departmental Directive (DD) 40

Section IX of DD 40 contains both general references and reformulation of the language contained in the Commission's Complaints Policy from August 2020. We understand that reformulated language is intended to codify current Commission practice in reviewing complaints.

While this initiative is needed and appreciated, we note the complaints policy relies heavily on verbal briefings during executive session. Commission practice has, however, moved away from verbal briefings to reliance on written communication. This is because complaints, particularly for more serious infractions, involve complex issues of law, policy and fact. Verbal briefings are not sufficient for Commission members to fully understand and advise on such complex issues. Commission practice has been to request the written investigation report to review whether it is sufficient to support the disposition. Although this practice has not yet been formally codified, the former mayor, in his response to 2022 Citizen Complaint 33 that the Commission referred to him for review, clearly instructed the Commission to conduct its review of complaints and communications with the Chief in writing.

Additionally, city council is currently preparing amendments to the city charter that would establish an independent body with authority to discipline officers for infractions of BPD rules and policies. These amendments will very likely affect the Commission's roles, responsibilities and procedures for reviewing complaints.

Until such time if and when amendments to the city charter are enacted, the current complaints policy remains in effect. In this Commissioner's opinion, reformulations of the complaints policy in Section IX are reasonable and implementable for the time being. It is suggested, consistent with the Chief's suggestion noting that description of the independent panel could be included in Section IX, to add a caveat to this section noting that the Complaints Policy is subject to review in the process of amending the city charter. This would accurately describe the state of play, provide notice that this section is subject to revision and, hopefully, make the revision process simpler and faster.

It is also noted that paragraph's 4 and 5 of the Complaints Policy contain vague language. As noted in the comments to the introductory paragraph to Section VII of DD 40, although paragraph 4 could be interpreted to require that the Chief must share a recommendation for discipline with the Police Commission prior to finalizing that discipline, it is not an explicit requirement. It is also not a requirement that has been consistently followed in the past.

That said, this Commissioner would not object to following this practice moving forward. As such, and regarding Section IX. D. 4 of DD 40, the 14 day timeline for postponing action is a reasonable requirement. This is based on the understanding that the Chief would provide the Commission with a verbal briefing in Executive Session prior to submitting the written investigation report to the Commission. If so, the Commission would then request the written report, one of the actions listed, to move the process forward in a timely manner.

This Commissioner also recognizes the need for complaints against officers to be resolved in a timely manner. Reliance on written communication, rather than verbal meetings in Executive Session, would enable a more efficient and speedy resolution process. This Commissioner is of the opinion that improved coordination between the Commission and BPD could improve efficiency and suggests that it explore development of protocols with the department. These protocols could be developed over time and as practices evolve and need not be in place in order to finalize DD 40.



**BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD40 External and Internal Complaints, Supervisor Reviews,
Administrative Reviews, Internal Investigations & Discipline**
Reviewed and published ~~March-June~~ xx, 2024

PURPOSE: To ensure any person can bring forward complaints about the conduct of employees of the Burlington Police Department (BPD) whenever a person believes an employee has acted improperly. To establish a process that enables the BPD to initiate positive corrective action, re-training, or education, and, when appropriate, effective discipline for improper conduct. To guarantee that employees' due process rights are safeguarded while also protecting employees from unwarranted criticism for properly discharged duties. To support principles of fair and impartial policing within the BPD by delineating the role of the Board of Police Commissioners in reviewing complaints against employees.

POLICY: The Burlington Police Department has a well-established tradition of serving the community with integrity and professionalism. To maintain our proud tradition and continue improving the quality of the BPD's service, each and every employee must accept responsibility for maintaining high professional standards.

CONTENTS:

- I. Definitions
- II. External and Internal Complaints
- III. Supervisor Reviews, Administrative Reviews & Internal Investigations
- IV. Supervisory Authority
- V. Employee Rights and Obligations
- VI. Administrative Quality Control
- VII. Authority and Actions of the Chief of Police
- VIII. Discipline
- IX. Board of Police Commissioners
- X. Act 56
- XI. Appeals
- XII. Dismissal
- XIII. Retention of Records
- XIV. Additional Sources & References

Appendix 1 - 6



I. DEFINITIONS

- A. **Complaint.** Any allegation that a BPD employee has performed in an unsatisfactory manner. This includes allegations of corruption, or allegations that a BPD employee has violated the BPD's rules or directives, or the laws of the City of Burlington, the State of Vermont, or the United States of America.

1. External complaint. A complaint made against a BPD employee by a person who is not a BPD employee shall be considered an external complaint.
2. Internal complaint. A complaint made against a BPD employee by a person who is also a BPD employee shall be considered an internal complaint.
 - a. This includes performance-related complaints made by supervisors against subordinates that require a second supervisor to conduct a review. It does not include performance-related issues that a supervisor can address via verbal coaching or written performance counseling.
3. Invalid complaint. A complaint made against a BPD employee or filed with the BPD that is inapplicable to the BPD shall be considered an invalid complaint. Examples include complaints that refer to a different Burlington (e.g., Burlington, North Carolina, or Burlington, Ontario), **a complaint that cannot be reasonably separated from delusion or psychosis**, complaints that are clearly related to a complainant's mental health and are indicative of delusion or fantasy, complaints that refer to employees of a different department of the City of Burlington, and complaints that describe a crime experienced by the complainant that does not involve a BPD employee (e.g., a person mistakenly uses the *Burlington Police Department Online Citizen Complaint Form* to report a stolen vehicle).
- B. **Corruption.** Any activity or other conduct committed by a member of the BPD, whether on or off duty that, if substantiated, would constitute a **crime**.
- C. **Disciplinary action.** There is a continuum of responses to infractions. Disciplinary actions may include written reprimand, reassignment, demotion, unpaid suspension, and dismissal.
- D. **Effective internal affairs program.** As defined in 20 VSA § 2401, this means that the BPD does all of the following:
 1. Accepts complaints against its employees from any source.
 2. Assigns an investigator to determine whether an employee violated the law or any BPD rule or directive.
 3. Establishes a code of conduct that outlines expectations for employees and describes prohibited activity for employees.
 4. Provides due process rights and **progressive a range of** discipline.
 5. Treats its accused employees fairly and decides employee discipline based on just cause, a set range of discipline for offenses, consideration of mitigating and aggravating circumstances, and due-process rights.
 6. Provides for review of employee discipline by citizens outside the department.
- E. **Employee.** Any person employed by the Burlington Police Department, to include sworn officers, sworn supervisors, and sworn reserve officers and all non-sworn professional staff members, regardless of their bargaining union (or lack thereof).

Commented [MJ1]: Language proposed by Commissioner Cox

Commented [JK2]: Meeting the legal definition of corruption?

Commented [MJ3]: Proposed by Commissioner Hanson

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F. **Infractions.** There is a continuum of infractions, ranging from low-level infractions to criminal conduct that violates the laws of the State of Vermont or the United States of America.

1. Lower-level infractions of policy and procedure typically result in coaching, training, or counseling prior to imposing discipline. These types of infractions do not generally result in a formal Administrative Review or Internal Investigation. They generally do not disrupt police duties or cause public harm. Examples of lower-level infractions could include but are not limited to:
 - a. Tardiness;
 - b. Misuse of sick time;
 - c. Late paperwork that does not adversely impact a case;
 - d. Improper care and maintenance of equipment;
 - e. Discourtesy;
 - f. On-duty cruiser operation in violation of 23 VSA, etc.
2. Mid-level infractions or repetitive lower-level infractions are generally handled at the lowest possible level beginning with a letter of reprimand or admonishment, and progressing into more substantial discipline such as suspension. They generally cause minimal or contained disruption with no impact on the community. Examples of mid-level infractions could include but are not limited to:
 - a. Repetitive lower-level issues;
 - b. Carelessness with firearms;
 - c. Accepting de minimis gratuities;
 - d. Low-level neglect of duty such as
 - i. Absences
 - ii. Falling asleep on a night shift
 - iii. Failing to maintain custody and control of weapons, Criminal Justice Information Services (CJIS) systems, or encrypted technology;
 - e. More substantial courtesy matters; etc.
3. Higher-level infractions may result in more substantial discipline. They generally carry a high risk of disruption to police duties and/or impact the community. These kinds of infractions could include but are not limited to things such as:
 - a. Veracity issues;
 - b. Harassment;
 - c. Excessive force;
 - d. Knowing associations with criminals or targets of investigation;
 - e. Abuse of authority;
 - f. Failure to follow orders;
 - g. Political activity restrictions;
 - h. Criminal conduct in violation of Vermont law or federal law.

Commented [MJ4]: Proposed by Commissioner Hanson. Note that "Section F. Infractions" was lifted from the BPOA contract, and this addition would deviate.

Commented [JK5]: Suggest BPD confirm this is harmonized with recent revision to DD 01

Commented [JK6]: Suggest BPD confirm this is harmonized with Memo from March 2024

Commented [MJ7]: Proposed by Commissioner Hanson. Note that "Section F. Infractions" was lifted from the BPOA contract, and this addition would deviate.

Commented [MJ8]: Proposed by Commissioner Hanson. Note that "Section F. Infractions" was lifted from the BPOA contract, and this addition would deviate.

G. **Non-disciplinary action.** There is a continuum of responses to infractions. Non-disciplinary actions may include education, training or retraining, verbal coaching, written performance counseling, or referrals to professional counseling.

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- H. **Other misconduct.** Any activity, improper behavior, or other conduct committed by a member of the BPD, whether on or off duty that, if substantiated, would impugn the integrity of the BPD in a way that would erode the trust and ability to assist witnesses, victims, or other members of the public.
- I. **Review.** All valid complaints will be reviewed. There are three levels of review, in ascending order of complexity and seriousness: supervisor review, Administrative Review, and Internal Investigation. See Section III.

II. EXTERNAL AND INTERNAL COMPLAINTS

- A. **All complaints accepted.** Allegations that a BPD employee has committed an infraction may be initiated from outside or inside the BPD. Every such allegation will be accepted by the BPD. All complaints must be reported to the Chief of Police.

1. The most common manner in which complaints are lodged is via the City of Burlington's website, on the Police Department page, under the tab "Citizen Complaints and Compliments," where users can access the *Burlington Police Department Online Citizen Complaint Form*. This is an online, fillable e-form. The independent Board of Police Commissioners automatically receives all online complaints.
2. Written copies of the *Citizen's Complaint Form*, which can be completed by a complainant, are also available at the City website. A copy of the form is included in the appendix of this directive. Additionally, forms are available at:
 - a. City offices: such as the Mayor's office, the Community Justice Center, CEDO, the City Attorney's office, the Miller Center, Parks & Recreation, and the Burlington Electric Department.
 - b. Non-governmental locations: such as the Peace and Justice Center, Migrant Justice, AALV, and Burlington High School.
3. Verbal or written complaints to the Mayor's Office, members of the City Council, and the Police Commission will be accepted without need for a written *Citizen's Complaint Form* or *Burlington Police Department Online Citizen Complaint Form*.
43. Complainants will be asked to provide a preliminary category describing the nature of their allegations, selecting from:
 - a. Force. A complaint alleging that a BPD officer used force that was not objectively reasonable. Excessive force is force that is not objectively reasonable from the perspective of a reasonable officer in the same circumstances. ***Excessive force will not be tolerated.***
 - b. Abuse of authority. A complaint alleging that an officer took actions for a purpose other than to accomplish a lawful law-enforcement objective, including unauthorized searches or seizures of persons, houses, papers, and effects or inappropriate entry onto private property. Abuse of authority includes racial profiling or other biased policing, as described in *DD03 Fair and Impartial Policing*, Section IX E.
 - c. Courtesy. A complaint alleging that a BPD employee acted in a rude or unprofessional manner, used rude or offensive gestures or profane language.

Commented [MJ9]: Councilor Hanson asked about this; it is taken from an existing definition in D43.

Commented [JK10]: Suggested revision: Timeline for forwarding written complaints to the BPC is 5 days as described in D. below. Timeline for forwarding online complaints to the Commission is shorter and also described in a section below. Suggest these timelines be referenced here or delete this sentence.

Commented [JK11]: Suggest BPD tests and confirms that the drop down menu for on-line complaints accommodates these categories.

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- d. Offensive language. A complaint alleging that a BPD employee used language that was degrading on the basis of ethnicity, race, sex, sexual orientation, or any other protected class as described in 13 VSA § 1455.
- e. Neglect of duty. A complaint alleging that a BPD employee did not respond to or address an incident or complaint in a reasonable manner.
- ef. Other department violation. A complaint alleging a violation that does not fit into the above categories.

Commented [MJ12]: Suggested by Commissioner Hanson.

B. Citizen allegations. These are external complaints. Anyone can lodge a complaint against a BPD employee.

1. Complaints in writing. Any person can use the online *Burlington Police Department Online Citizen Complaint Form* or complete a written *Citizen's Complaint Form*. Any person making a complaint can choose to remain anonymous. If the person provides contact information, a BPD supervisor will confirm the receipt of the complaint within two business days.
2. Verbal complaints. Any person can make a verbal complaint. If the person verbally makes a complaint to a non-supervisory employee, the employee will listen and record basic facts. If the employee has a body-worn camera, the employee will activate it. The employee will then direct the person to a supervisor for additional documentation and/or to the variety of reporting methods described in Section (A) above. If the person elects not to document the complaint with a supervisor, the employee who received the complaint will share the basic facts with the Officer in Charge (OIC) prior to the end of the shift. The OIC will fill out a copy of the *Citizen's Complaint Form* with as much information as is available and inform the Deputy Chief of Administration and the Chief of Police.

Commented [JK13]: Suggested protocol. Written receipt CC'd to a Police Commission administrative email account. This would strengthen transparency while introducing efficiency in BPC's review and saving officers' time

C. Employee allegations. These are internal complaints. Any employee can lodge a complaint against another employee. The employee may use the online *Burlington Police Department Online Citizen Complaint Form* or complete a written *Citizen's Complaint Form*. More frequently, the employee may verbally transmit the complaint to any BPD supervisor. The supervisor will notify the Chief of Police, via the chain of command.

1. The Human Resources Department. The employee may also make the complaint to the City of Burlington Human Resources department. If the employee belongs to a union, the employee may also make the complaint to a representative of that union.
2. Reporting corruption. If the complaint alleges corruption, employees must follow the reporting procedures described in *DD43 Reporting of Corruption and other Misconduct*.
3. Other reporting venues. Nothing described herein shall prevent an employee from reporting criminality to an appropriate law-enforcement entity other than the BPD, such as the Vermont State Police, the Office of the Chittenden County State's Attorney, the Office of the Vermont Attorney General, the United States Attorney's Office for the District of Vermont, or federal law-enforcement agencies such as the Federal Bureau of Investigation.

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- D. **The Board of Police Commissioners.** All *Burlington Police Department Online Citizen Complaint Forms* are automatically forwarded to the Burlington Police Commission via email. For any written *Citizen's Complaint Form* received by the BPD or filled out by an OIC, the Deputy Chief of Administration will transmit it to the Police Commission within five business days of receipt.
- E. **Minor misunderstandings.** An exception to the BPD's citizen complaint policy applies to minor misunderstandings on the part of a complainant, which can be quickly resolved with an explanation of state law and/or BPD policy. Such minor misunderstandings may be resolved by the line supervisor and should be documented on either the Shift Report or via an e-mail to the Deputy Chief of Administration and the Chief of Police. If the complaining citizen is not satisfied with this resolution, the line supervisor will assist the citizen in completing a *Citizen's Complaint Form*.
- F. **Review or investigation.** Upon receiving a complaint, the Chief of Police will determine whether a supervisor review, an Administrative Review, or an Internal Investigation is appropriate. The Chief of Police will forward all relevant information to the Deputy Chief of Administration, who will assign a supervisor to conduct the appropriate review or investigation.
1. If the review determines that a complaint may involve possible criminal conduct, the Chief of Police will refer it to the Vermont State Police for investigation and/or consult with the Chittenden County State's Attorney's Office to determine appropriate next steps.

III. SUPERVISOR REVIEWS, ADMINISTRATIVE REVIEWS & INTERNAL INVESTIGATIONS

It is a standard supervisory responsibility that a first-line supervisor should examine subordinate conduct for the purpose of performance counseling and coaching. External or internal complaints require more substantial review. All valid complaints will be reviewed. There are three levels of review, listed below, from least to most complex. All reviews begin from the allegations in the written complaint, if one is available, or statements made by the complainant. All reviews examine available Department reports and records, such as recordings from the Emergency Communications Center, Valcour incident narratives, or body-worn camera video. All reviews result in an overview and recommendation for the Chief of Police.

- A. **Supervisor review.** The Deputy Chief of Administration will select a supervisor to conduct a review of the complaint. The supervisor shall have no interest in or attachment to the issue or employee(s) being reviewed. Subject employees are not automatically informed of supervisor reviews unless an interview is required (see A.1, below), or the complaint is "sustained."
1. If the assigned supervisor determines that it is necessary to conduct a formal, noticed interview of any BPD employee, the assigned supervisor will so inform the Deputy

Commented [JK14]: This section relates to CNA finding 1.18 - that the Chief is both keeper of complaints and adjudicator. As note in Section VI C. and other sections of the directive, specific authority has been delegated to the Deputy Chief of Administration (DCA) in receiving complaints, assigning investigators, overseeing investigation, etc. Separation of powers between the chief and DCA demonstrates chief is not both keeper and adjudicator. Although this is described in several sections of this DD, suggest a paragraph more clearly describing roles and responsibilities of chief and DCA and separation of their powers be included in the document, perhaps at the top of the document in Section 1 Definition D or as an introductory paragraph for Sections III or VI.

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Chief of Administration, who will transition the supervisor review into an Administrative Review.

2. If the assigned supervisor determines that there is a possible violation of *DD03 Fair and Impartial Policing* or *DD05 Statewide Policy on Police Use of Force*, the assigned supervisor will so inform the Deputy Chief of Administration, who will transition the supervisor review into an administrative review.

B. Administrative Review. The Deputy Chief of Administration will select a supervisor in the rank of lieutenant or above to conduct an Administrative Review. The supervisor shall have no interest in or attachment to the issue or employee(s) being reviewed.

1. If the assigned supervisor determines that it is necessary to conduct a formal, noticed interview of any BPD employee, as subject or witness, the supervisor will provide a formal notice to the employee. Immediately prior to beginning the administrative interview, the supervisor will provide a Garrity warning. Templates of the notice and the Garrity warning are included in the appendix of this directive.
2. If the assigned supervisor determines that the review indicates a pattern of misconduct beyond the specific allegation, the assigned supervisor will so inform the Deputy Chief of Administration, who will transition the Administrative Review into an Internal Investigation.
3. If the assigned supervisor determines that the review, if it proves the allegation(s), could lead to a substantial penalty involving suspension, demotion, or termination, the assigned supervisor will so inform the Deputy Chief of Administration, who will transition the Administrative Review into an Internal Investigation.

C. Internal Investigation. The Deputy Chief of Administration will select a supervisor in the rank of lieutenant or above who has attended an accredited Internal Affairs Investigator course to conduct an Internal Investigation. The supervisor shall have no interest in or attachment to the issue or employee(s) being investigated.

1. If the assigned supervisor determines that it is necessary to conduct a formal, noticed interview of any BPD employee, as subject or witness, the supervisor will provide a formal notice to the employee. Immediately prior to beginning the administrative interview, the supervisor will provide a Garrity warning. Templates of the notice and the Garrity warning are included in the appendix of this directive.
2. If the assigned supervisor develops reasonable suspicion that the incident under investigation involves a crime, the assigned supervisor will immediately notify the Deputy Chief of Administration, who will report it to the Chief of Police. In consultation with the Burlington City Attorney, the Chief of Police will determine whether to continue the Internal Investigation or refer it to another agency, such as the Vermont State Police.

IV. SUPERVISORY AUTHORITY

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All supervisory personnel, to include sergeants, lieutenants, the Executive Manager, the Assistant Director of Crisis, Advocacy, Intervention Programs (CAIP), and deputy chiefs, have the authority to take the following disciplinary actions against a subordinate:

- A. **Issue verbal reprimands.**
- B. **Issue written reprimands.**
- C. **Temporarily place an employee on administrative leave.** Any supervisor can order a subordinate to take temporary administrative leave. Upon observing or learning about misconduct that, in the supervisor's estimation, renders the employee incompetent or incapable, the supervisor can place the subordinate on paid administrative leave for the duration of the shift on which the conduct was revealed.
 - 1. Such leave can only extend to the next shift for which the Chief of Police or a deputy chief (or, if applicable, the Assistant Director of CAIP) is available.
- D. **Recommend further disciplinary action to the Chief of Police.**

V. EMPLOYEE RIGHTS AND OBLIGATIONS

The rights and obligations of employees who are under investigation and subject to interrogation for any reason that could reasonably lead to disciplinary action are set forth in the collective bargaining agreements, specifically the *Agreement between the City of Burlington and the Burlington Police Officers' Association* (hereafter the BPOA CBA) and the *Agreement between the City of Burlington and Local 1343 of the American Federation of State, County, and Municipal Employees* (hereafter the AFSCME CBA). **The procedure outlined in the BPOA CBA contract shall be followed for all Internal Investigations.** This procedure shall be used for any BPD employee, sworn or unsworn, regardless of the involved employee's position or role. Additionally, for all BPD employees, the following shall also apply:

- A. **Notice.** For any Administrative Review or Internal Investigation in which an employee is to be administratively interviewed, the employee will be informed in writing prior to the interview. The notice will inform the employee whether he or she is a subject or witness. The notice will include the rules or directives that are alleged to have been violated. The notice will name the assigned investigator, if available. The notice will include referral for employee wellness services. At the time of the administrative interview, a Garrity warning will be provided to the employee. Templates of the notice and the Garrity warning are included in the appendix of this directive.
- B. **Scope of interviews.** All interviews shall be limited in scope to activities, circumstances, events, conduct, or acts that pertain to the incident that is the subject of the investigation.
 - 1. Truthfulness. As stated in *DD01 Law Enforcement Role & Authority, Ethics, Department Rules*, Rule 26, employees shall truthfully answer all questions

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specifically directed to the scope of employment and operations of the BPD, to include questions asked during the course of an Internal Investigation.

- C. **Prohibitions.** No employee shall be compelled to take a polygraph, participate in a photo or live line-up, disclose financial records, or submit to medical or laboratory examinations during the course of an Administrative Review of Internal Investigation.
- D. **Prompt process.** Administrative Reviews and Internal Investigations shall be completed and findings shall be issued promptly, normally within thirty days. The time required may vary from case to case based on the nature of the allegation(s) and the complexity of the investigation. If additional time is necessary to complete the investigation, the Chief of Police may authorize an extension of up to sixty days, for a maximum time limit of ninety days from receipt of the complaint to the issuance of findings.
 - 1. Criminal investigations. For any Internal Investigation into a matter that also involves a criminal investigation into the matter, such as an officer-involved shooting or lethal force incident as described in *DD05 Statewide Policy on Police Use of Force* Appendix A, the criminal investigation—and, if applicable, prosecution—shall proceed and conclude prior to the conclusion of the BPD’s Internal Investigation. The ninety-day time limit shall not include the time required for the criminal investigation or prosecution. The BPD shall not interview an employee prior to the employee’s being interviewed by the criminal investigators.
 - a. An officer-involved shooting that is determined to be lawful and justified by the Attorney General and/or State’s Attorney, and that does not result in any complaint, will be recategorized from an Internal Investigation to a standard Use of Force Review.

VI. ADMINISTRATIVE QUALITY CONTROL

The Chief of Police shall accept all complaints. The Deputy Chief of Administration shall oversee the processing of external and internal complaints, and the execution of supervisor reviews, Administrative Reviews, and Internal Investigations.

- A. **Complaint tracking.** On a regular basis, the Deputy Chief of Administration shall report the status of all complaints and reviews directly to the Chief of Police. On a regular basis, the Deputy Chief will also communicate with a designated member of the Board of Police Commissioners. Furthermore, the Deputy Chief will provide status updates or resolutions to the Board of Police Commissioners in executive session at each monthly meeting.
- B. **Procedures.** Upon receiving a complaint from the Chief of Police, the Deputy Chief of Administration will select a supervisor to conduct the review.
 - 1. The supervisor conducting the review shall have freedom of movement and authority to examine all BPD reports and records, including audio and video records, regarding infractions of Departmental policy, procedure, or rules and regulations. A supervisor

Commented [JK15]: Suggested protocol. Written correspondence has demonstrated to be more efficient and effective. Enables more accurate exchange of information and would save the DC’s time.

Commented [JK16]: Pertains to CNA finding 1.18. Indicates Chief is keeper of complaints. Please see comments above and below

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conducting noticed administrative interviews shall have the authority to question any BPD employee regarding infractions of BPD or City training, directives, or practices.

- a. Employees subject to administrative interview are required to answer all questions specifically directed to the scope of employment and operations of the BPD truthfully.
- b. No employee shall be subject to retaliation for any statements made during an administrative interview; this shall not prevent the employee from being subject to discipline for conduct revealed during an administrative interview.

2. No retaliatory measures shall be taken against any ~~supervisor~~employee who has properly conducted a review, unless in the process the law is broken and/or misconduct occurs.
3. Upon completion of reviews, the Deputy Chief of Administration will forward all findings to the Chief of Police.

C. **Complaint records to be confidential.** The Deputy Chief of Administration shall maintain a complete record of complaints. These records shall be maintained separate from all other BPD records and shall be strictly confidential.

D. **Record of complaints.** The Deputy Chief of Administration, or his/her designee, will maintain a written record of each complaint.

1. That written record will at a minimum include:
 - a. The name(s) of the employee(s) involved.
 - b. The name(s) of the complainant(s), if known.
 - c. ~~b.~~ The date of receipt of the allegation.
 - d. ~~e.~~ The date of the alleged incident, if known.
 - e. ~~f.~~ The type or nature of the allegation.
 - f. ~~g.~~ The name(s) of the supervisor who conducted the review.
 - g. ~~h.~~ The final disposition of each complaint.
 - h. ~~i.~~ How the matter was closed out with the complainant.
2. In addition, if the complaint involves an allegation of excessive use of force, or an allegation of dishonesty or other serious misconduct, the written record will include:
 - a. A description of all action taken in response to the complaint.
 - b. An inventory of all witnesses, documents, evidence, or other information obtained or consulted in the course of the review.

E. **Supervisor responsibility.** Supervisors are responsible for the prompt investigation of all alleged acts of misconduct or other breaches of discipline by employees they supervise. At a minimum, such allegations compel the supervisor to elevate the allegations through the chain of command.

F. **Communication with the complainant.** The Deputy Chief of Administration shall ensure the following with regards to maintaining contact with the original complainant:

1. The Deputy Chief of Administration will advise the complainant when the complaint is received.

Commented [JK17]: Pertains to CNA finding 1.18. Descriptions of the DCA's roles demonstrate that the Chief is not keeper of complaints. Authority is delegated to the DCA and it appears all complaints, internal and external come through DCA to the Chief.

Commented [JK18]: Related to suggested protocol above, emails to the complaint would be CC'd to a BPC administrative email account for increased transparency and efficiency

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2. When reasonable, the Deputy Chief of Administration will periodically inform the complainant as to the status of the complaint, including its resolution.

G. **Statistical summary.** On an ongoing basis, the Deputy Chief of Administration shall compile a statistical summary of all complaints investigated. This summary shall include the number of supervisor reviews, Administrative Reviews, and Internal Investigations and the category of disposition of each. This summary shall be made available to agency employees and the Board of Police Commissioners upon request. If a trend indicating the need for training is detected, the Deputy Chief of Administration shall make appropriate recommendations to the Training Unit and the Chief of Police and inform the Board of Police Commissioners. Additionally, each instance in which a complaint is received is an opportunity to examine practices, procedures, and conduct. Each should be examined and alterations to policy, practice, or operations incorporated swiftly as necessary.

H. **Public transparency.** Every six months, the BPD will release a summary of all Administrative Reviews and Internal Investigations that have been completed since the last release. The summary will be anonymized, but will contain the category of the complaint, a description of the complaint (including the sex and race of involved persons), and the findings, disposition, and discipline levied, if applicable.

VII. AUTHORITY AND ACTIONS OF THE CHIEF OF POLICE

The Chief of Police derives authority from the Municipal Charter of the City of Burlington. Specifically, in 24 App. VSA ch. 3, § 183 (a), the charter states:

Whenever it shall appear to the Chief that any member of said force 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 by a responsible person against such member, the Chief may investigate and, after appropriate notice and hearing, dismiss such member from the force, order a demotion 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'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 shall have the power to subpoena witnesses and to administer the oath to such witnesses. The Board of Police Commissioners 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 Chief of Police.

Furthermore, 24 App. VSA ch. 3, § 183 (d) states:

Commented [JK19]: An important initiative. According to National Association of Civilian Oversight of Law Enforcement (NACOLE) this is a best practice for oversight bodies such as the BPC to strengthen transparency and public confidence in the complaints process. This issue has been raised by BPC for over a year. BPC's independent counsel and City Attorney's office indicated the City Attorney would need to provide guidance for anonymizing summaries. Due to turn over and case load in City Attorney's office, guidance has not yet been provided. Additional discussion on the way forward is suggested.

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The Chief 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 sufficient, suspend from duty without pay any member of the police force for a period not to exceed 14 days.

By practice and by this directive, the Chief of Police shall accept all complaints, direct that complaints be reviewed, assess those reviews, issue findings based on the reviews, and, as appropriate, levy non-disciplinary action or disciplinary action.

- A. **Totality of circumstance.** It is not practical, nor possible, to establish a firm and set penalty and corrective measure for every conceivable situation necessitating disciplinary action. Extenuating, mitigating, or aggravating circumstances and other factors will govern the severity of disciplinary action.
- B. **Administrative leave.** Unlike suspension without pay, administrative leave is an employment status that continues to remunerate the employee at his or her normal base compensation. As described in the *City of Burlington Comprehensive Personnel Policy Manual*, in Section 6.17, the Chief of Police can place a BPD employee on paid administrative leave from duty at any time that the Chief believes it is in the best interests of the BPD or of the employee that the employee be placed on a leave from his or her duties. Examples of reasons for a paid administrative leave include but are not limited to: the need to conduct an Internal Investigation; the need for criminal charges to be pursued; the need to curtail the subject employee's access to Criminal Justice Information Systems (CJIS) while under investigation. Furthermore, paid administrative leave may be warranted if, in the judgment of the Chief of Police, the employee's continued presence at work is detrimental to the efficiency of the BPD, the wellbeing or morale of other BPD employees, or the best interests of the public.
- C. **Findings.** The Chief of Police shall:
 1. Assess every review to determine the appropriate disposition.
 2. Make a finding, using the following categories of disposition:
 - a. Unfounded. The act or acts described in the complaint did not occur or did not involve BPD employees.
 - b. Exonerated. The act or acts described in the complaint did occur, but were justified, lawful, and proper.
 - c. Non-sustained. The review failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.
 - d. Sustained. The review disclosed sufficient evidence to prove the allegations made in the complaint.
 - e. Non-involved. The review established that the individual named in the complaint is not involved in the alleged incident.
 3. The Chief of Police or his/her designee shall make reasonable efforts to notify the complainant, in writing, of the outcome of the review.
 4. At the conclusion of any supervisor review that results in a "sustained" disposition, or at In the event of a "sustained" disposition following a supervisor review, the Chief of

Commented [JK20]: This language appears to be the crux of CNA's concerns expressed in finding 1.18. As noted above, much authority regarding complaints has been delegated to the DCA and there is separation of powers and duties between Chief and DCA. Suggest to include explanatory text describing this explicitly as noted above.

Commented [JK21]: Related to suggested protocol above, email notification to the complainant would be CC'd to a BPC email account

Commented [MJ22]: 4 and 5 combined as recommended by Councilor Hanson

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~~Police or Deputy Chief of Administration will notify the subject employee, in writing, of the disposition.~~

5. ~~At the conclusion of any Administrative Review or Internal Investigation, the Chief of Police or Deputy Chief of Administration will notify the subject employee, in writing, of the disposition. The employee will have the right to confront the evidence in the review and seek redress or reevaluation from the Chief of Police.~~

D. **Loudermill hearing.** Upon issuing a “sustained” disposition for an Internal Investigation for which the discipline is likely to include suspension, demotion, or dismissal, the Chief of Police will afford the subject employee with a Loudermill hearing. In keeping with *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), this is a hearing that allows the employee to explain or justify his or her conduct, or rebut evidence, or provide a counternarrative to the case. The Chief will deliver a Loudermill notice to the employee and set a hearing within a reasonable time. The notice will include a specific description of the charges, an explanation of the BPD’s evidence, and a preliminary disciplinary proposal. The hearing permits the subject employee to confront the allegations, correct any errors in the Internal Investigation, and address the type or level of discipline being considered.

E. **Deliberation.** When considering a disposition and possible discipline for Administrative Reviews or Internal Investigations, the Chief of Police shall consult with the Mayor, and/or the City Attorney, and/or the Director of Human Resources as necessary. Such consultation is required for any complaint that involves serious bodily injury to any participant, or that ~~the Chief of Police believes has occasioned~~ raises significant public concern.

VIII. DISCIPLINE

After issuing findings, the Chief of Police shall determine appropriate discipline. In certain instances, described below in IX C 2, the Chief of Police ~~must share a recommendation for discipline with the Police Commission prior to finalizing that discipline.~~ The BPD strives to engage in progressive and corrective discipline. Whenever it is necessary to discipline an employee, it shall be done fairly and in such a manner as not to embarrass the employee in front of the public or fellow employees.

A. **Continuum of response.** Outcomes of reviews or investigations may result in a continuum of responses that includes education and training, performance counseling, corrective action, or discipline. The continuum includes but is not limited to (responses may include more than one of the items in the continuum in some instances):

1. Verbal performance counseling or coaching
2. Training/re-training
3. Written performance notation/ Coaching Report
4. Written counseling/“Performance File Entry”
5. Referral to professional counseling, such as the Employee Assistance Program
6. Written reprimand—the first level of “discipline”

Commented [JK23]: This appears narrow. Section 1 F. 3 lists numerous higher level infractions not included here. This section might simply reference that section. Importantly, the Commission’s role includes identifying issues that occasion significant public concern. BPC should also be referenced.

Commented [MJ24]: Commissioner Hanson

Commented [JK25]: This requirement is not explicitly stated in BPC complaints policy from August 2020. Please see overarching comments on the complaints policy provided separately and specific comments related to the Commission’s role in Section IX below.

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7. Reassignment
8. Suspension or forfeiture of pay
9. Demotion
10. Dismissal

- B. **Training and corrective discipline.** The BPD recognizes and encourages the use of training as an effective method of improving employee productivity, morale, and adherence to policies. The BPD agrees with the tenets of progressive and corrective discipline, where appropriate.
- C. **Severity of discipline.** The severity of a disciplinary action shall be commensurate with the cause of the action. The specific types of disciplinary measures to be taken against an employee are defined in the applicable collective bargaining agreement or the City's Personnel Policy.
- D. **Verbal counseling.** The BPD encourages supervisors to verbally counsel and coach employees for minor transgressions, when appropriate. Counseling shall not be considered a disciplinary measure and may not need to be documented. There may be occasions, however, when a supervisor will document an informal verbal counseling in the employee's performance file. This notation is not discipline. It is merely a record of the issue made available to other supervisors should there be additional transgressions of this same nature. The documentation will be on the BPD's triplicate form entitled "Employee Performance Entry." One copy is provided to the employee, one copy is sent to the Deputy Chief of Administration, and one copy remains in the performance file until it is removed. Any action taken beyond informal employee counseling and that documentation shall be considered a disciplinary action and must be consistent with the provisions of this directive and the applicable contract or policy.
- E. **Purpose of disciplinary decisions.** It is critical that a system of discipline be established that contributes to minimizing abuse of police authority and promotes the BPD's reputation for professionalism. Each employee must understand and be guided by the BPD's standards. It is recognized and understood that employees will make errors in judgment from time to time in carrying out their responsibilities. While each error in judgment offers an opportunity for the BPD and the employee to learn, it is also understood some errors will have greater consequences than others for the public, the BPD, and the employee. The BPD has an obligation to make its expectations as clear as possible to its employees. The BPD has an equal obligation to make the consequences for failing to meet those expectations clear.
- F. **Factors in disciplinary decisions.** Described here are the factors that will be considered in the disciplinary decision process for alleged breaches of policy or rules.
1. Employee motivation. The BPD exists to serve the public. ~~One factor in examining an employee's conduct will be whether or not the employee was acting in the public interest will be a mitigating or aggravating factor. An employee who violates a policy or procedure in an effort to accomplish a legitimate police purpose, and who~~

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~~demonstrates an understanding of the broader public interest inherent in the situation, will be given more positive consideration in the determination of consequences than one who was motivated by personal interest. From time to time it may be difficult to distinguish between public and personal interest.~~ As an example, arresting a dangerous criminal is in the public's interest. Violating ~~the a~~ criminal's Constitutional rights ~~in order to do so~~ is not in the public's interest. The greater public interest is for the BPD to carry out its responsibilities while protecting the public's Constitutional guarantees. ~~But if an employee attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures, the desire to encourage creativity may carry significant weight in determining any discipline that might result.~~

2. Degree of harm. The degree of harm that an error causes is also an aspect in deciding the consequences of an employee's conduct. Harm can be measured in a variety of ways, including ~~It can be measured in terms of the~~ monetary cost to the department and community. ~~For example, an error that causes significant damage to a vehicle could be examined in light of the repair costs. Harm can also be measured in terms of the personal physical injury to a person, or the error causes, such as the consequences of an unnecessary use of force. Another way in which harm can be measured is the impact of the error on public confidence. An employee who engages in criminal conduct could affect the public confidence in the BPD if the consequences do not send a clear, compelling message that the conduct will not be tolerated.~~
3. Employee experience. ~~The level of experience of employees is a factor. A relatively new employee (or an experienced employee in an unfamiliar assignment) may receive consideration when judgment errors are made. Conversely, an employee who makes a judgment error that would not be expected of one who has a significant amount of experience may receive more serious sanctions.~~
4. Intentional and unintentional errors. ~~Errors can be classified as intentional or unintentional.~~
 - a. An unintentional error is an action or decision that turns out to be wrong, but based upon the information available at the time it was taken, seemed to be in compliance with policy and the most appropriate course. Unintentional errors also include those momentary lapses of judgment or acts of carelessness that result in minimal harm. Employees will be held accountable for these errors but the consequences will be more corrective than punitive unless the same errors persist.
 - b. An intentional error is an action or a decision that an employee makes that is known (or should be known) to be in conflict with law, established training, or procedures, rules, or policy. Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors. Within the framework of intentional errors there are certain behaviors that are entirely inconsistent with the responsibilities of the police profession. These include lying, theft, physical abuse of citizens, and other equally serious breaches of the trust placed in members of the police profession. The nature of the police responsibility requires that police officers be truthful. ~~It is recognized, however, that it is sometimes difficult to determine if one is being untruthful.~~ An employee will face discharge from the BPD when it is clear that the

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employee is intentionally engaging in an effort to be untruthful. ~~It is also a serious breach to have engaged in theft, physical abuse of citizens, or other criminal behavior.~~

5. Employee's past record. To the extent allowed by law and policy, an employee's past record will be taken into consideration in determining the consequences of a failure to meet the BPD's expectations. ~~An employee who repeatedly makes errors can expect the consequences of this behavior to become progressively more punitive. An employee whose past record reflects hard work and dedication to the community and BPD will be given due consideration in the determination of any disciplinary action.~~

- G. **Fair and consistent.** There are often circumstances that may have contributed to errors of judgment or poor decisions that need to be considered when determining the appropriate consequences for conduct found to be improper. Disciplinary action must be imposed in a consistent and fair manner. Consistency is defined as holding everyone equally accountable for unacceptable conduct. Fairness is defined as understanding the circumstances that contributed to the conduct while applying the consequences in a way that reflects this understanding. In order to ensure that employees are treated in a consistent and fair manner, the application of consequences for conduct that is not in keeping with the BPD's expectations will be based upon a balanced consideration of factors. Following the careful consideration of all applicable factors in any disciplinary review, every effort will be made to determine the consequences that consistently and fairly fit each specific incident.

IX. BOARD OF POLICE COMMISSIONERS

By charter, the Board of Police Commissioners is the appellate body for BPD employees who grieve discipline and is the approval body for changes, modifications, or additions to the BPD's rules and regulations. By directive, the Board of Police Commissioners also has a robust monitoring role. The Police Commission shall receive copies of all external and internal complaints made against BPD employees. ~~Complaints filed online will be immediately transmitted to the Police Commission via email forwarding, and written complaints will be transmitted to the Police Commission by the Deputy Chief of Administration within five business days of receipt.~~

- A. **Status updates.** The Chief of Police and Deputy Chief of Administration will provide status updates about complaints against employees at the first Police Commission meeting following receipt of the complaint, unless the matter is of such urgency that a special meeting is required. To preserve employee privacy, complaints shall only be discussed in executive session.
- B. **Records and video.** At the request of any member of the Police Commission who has completed a fingerprint-supported background check and required CJIS training, the Chief of Police will make the written record of any completed supervisor review, Administrative Review, or Internal Investigation available. ~~Other materials such as body-worn-camera footage and dispatch audio may also be shared, if permitted by law.~~ The material may not be shared with a Police Commissioner who has not met the CJIS

Commented [KJ26]: Please see overarching comments provided separately. Specific comments provided below.

Commented [JK27]: For clarity, these timelines could be noted in the relevant sections above.

Commented [JK28]: Please cite the law. Requirements for accessing reports, BWC and audio are stated here, further confirmed below with the limitation that BWC cannot be requested for random audits. If there is not additional statutory limits, suggest to reference the language below in regards access to these materials.

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requirements. The material is not for public disclosure, and will only be discussed in executive session.

1. Statements made in administrative interviews by employees who are the subject of a review can only be shared with the Police Commission when it acts as an appellate body, as per the BPOA CBA, and will be redacted unless being used in an appeal.
2. Police Commissioners have AXON accounts through which they can watch body-worn-camera footage of any incident that is the subject of a complaint, unless the incident is otherwise controlled by an outside law-enforcement entity or the Vermont Judiciary, particularly the Family Division. Random audit of body-worn-camera footage is prohibited.
3. If a complaint has been referred by the BPD to an outside entity such as the Vermont State Police or Chittenden County State's Attorney's Office for investigation of possible criminal conduct, the materials will be made available to the Police Commission if the outside entity approves and determines that the materials may be disclosed to the Police Commission without adversely affecting any possible prosecution.

C. **Summaries.** Upon issuing findings and/or determining a disposition and resolving a complaint, the Chief of Police will summarize the findings and disposition or recommended disposition for the Police Commission in executive session.

1. For lower- and mid-level complaints, the Chief of Police will provide a verbal or written summary of the complaints and their status or disposition in executive session.
2. For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that is likely to result in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief of Police will provide the Police Commission with a full verbal briefing of the allegations and the recommended disposition of the case in executive session.

D. **Police Commission response.** After receipt of the summary described above, the Police Commission may:

1. Accept the Chief's summary and recommended action in full or in part;
2. Request additional information;
3. Request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, disposition (including recommending a range of sanctions for the misconduct), or other aspect of the matter; or
4. Postpone action to a later date, but no later than fourteen (14) days from the date of initial receipt of the summary, and then select from D 1, 2, or 3 above.

E. **Chief of Police response.** The Chief of Police may accept or reject the Police Commission's recommendations. If the Chief rejects the Police Commission's

Commented [MJ29]: Commissioner Hanson suggested having D only apply to C.2. (above).

Commented [JK30R29]: Disagree with this suggestion. Commission has requested additional information for various types of complaints that have resulted in a better outcome for the complainant and the BPD. This suggestion would place an unjustifiable and unnecessary limit on the Commission's access to information and role in reviewing complaints. It is not supported by Commission practice nor is it included in the Complaint's Policy that currently guides the Commission's work.

Commented [MJ31]: Commissioner Cox recommends this be lengthened

Commented [JK32R31]: Please see comments attached separately

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recommendations, the Chief shall explain to the Police Commission why the recommendations were not accepted.

1. If a majority of the Police Commission disagrees with the Chief's decision, the Police Commission Chair shall report this to the Mayor. Police Commission members should take care to avoid unauthorized disclosure of confidential information. To that end, any Commissioner may consult with the City Attorney's Office to obtain advice related to, among other things, the use and disclosure of confidential information.

DESCRIPTION OF REVIEW PANEL MIGHT GO HERE, IF IT IS CREATED BY COUNCIL

- F. **Misconduct by the Chief of Police.** Whenever the Police Commission becomes aware of allegations of misconduct by the Chief of Police, or if the Police Commission has concerns about the performance of the Chief of Police, the Chairperson of the Police Commission shall report this to the Mayor in a timely manner. In the event that the Chief of Police has engaged in misconduct pursuant to 20 VSA § 2401, also known as Act 56, the Chairperson of the Police Commission shall report this to the Chairperson of the Vermont Criminal Justice Council.

X. ACT 56

Conduct that falls within the categories of "Category A conduct," "Category B conduct," or "Category C conduct," as defined in 20 VSA § 2401, also known as Act 56, must be treated in accordance with that statute. The Chief of Police will report such conduct appropriately to the Vermont Criminal Justice Council.

XI. APPEALS

Any appeal relative to disciplinary action shall be handled by the Board of Police Commissioners, according the Municipal Charter of the City of Burlington, 24 App. VSA ch. 3, § 190 (a): "The Board of Police Commissioners 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 Chief of Police."

XII. DISMISSAL

All dismissals shall be in accordance with the City Charter. If employee misconduct results in dismissal of a non-probationary employee, it shall be the responsibility of the Chief of Police or his/her designee to provide the information regarding the dismissal to the affected employee, including: the effective date; reason; status of benefits; and information regarding the content of the employee's personnel file as it relates to the dismissal.

XIII. RETENTION OF RECORDS

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Commented [JK33]: Fully agree. The changes currently being deliberated by the Charter Change Committee will likely necessitate significant revisions to the Complaint's Policy and the Commission's role in reviewing complaints. Please see comments submitted separately

- A. **Performance file entries.** Entries in performance files may be used for progressive discipline for a maximum of two (2) years from the date of entry. Those are generally non-disciplinary matters such as short notations of verbal counseling or training; performance plans; letters of counseling or coaching; or other non-disciplinary documents.
- B. **Disciplinary entries in the personnel file.** Absent additional discipline being imposed during the time frames noted below, the following timelines are established for relevance in establishing progressive discipline:
1. Letters of reprimand and any other discipline short of suspension are relevant for a maximum of two (2) years from the date of the initiation of any supervisor review, Administrative Review, or Internal Investigation of the event/conduct.
 2. Disciplinary actions resulting in a suspension are relevant for a maximum of four (4) years from the date of the initiation of any Internal Investigation of the event/conduct.
 3. Records relating to significant discipline that does not result in termination but that triggers a suspension of one week or more—including but not limited to cases involving sexual harassment, harassment based on any protected category defined in 21 V.S.A. 495, significant issues related to response to resistance/use of force, any criminal activity, and veracity—may be retained permanently.

XIV. ADDITIONAL SOURCES & REFERENCES

Agreement between the City of Burlington and the Burlington Police Officers' Association

Agreement between the City of Burlington and Local 1343 of the American Federation of State, County, and Municipal Employees

Comprehensive Personnel Policy Manual for the City of Burlington and the Burlington Electric Department

Reviewed and adopted by the Burlington Police Commission on March XX, 2024.

Jon Murad, Chief of Police

xx March, 2024
Effective Date

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APPENDIX

Appendix 1. Citizen's Complaint Form

Appendix 2. Citizen Complaints Process

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Appendix 3. Citizen Complaints, Supervisor Reviews, Administrative Reviews & Internal Investigations Flow Chart

Appendix 4. Notice of Administrative Review / Internal Investigation

Appendix 5. Notice of Administrative Interview / “Garrity Warning”

Appendix 6. Role of the Burlington Police Commission in Reviewing Complaints Against BPD Employees, August 2020

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**POLICE DEPARTMENT
CITY OF BURLINGTON**

APPENDIX 1

CITIZEN COMPLAINT PROCESS

The Burlington Police Department (BPD) and City of Burlington Police Commission (the "Police Commission") are dedicated to ensuring the public safety of all persons in the confines of our City. To that end, we are committed to earning and maintaining the public trust. This commitment led us to develop a process to address complaints from community members about how BPD accomplishes its mission of public safety.

As part of the process, we encourage community members to report allegations of improper conduct on the part of BPD's sworn officers and non-sworn staff. These complaints, which are vital to ensuring BPD's legitimacy and effectiveness, will be reviewed and investigated in a prompt, open, and expedient fashion that includes review by the Police Commission, a group of citizen volunteers.

Any person may make a complaint by submitting the attached form in person or by mail to the BPD (One North Avenue, Burlington, VT 05401). If you prefer, you may submit the form to a City Councilor, <https://www.burlingtonvt.gov/CityCouncil>, the Mayor's Office, <https://www.burlingtonvt.gov/Mayor>, or in person to the Executive Manager, Shannon Trammell, at One North Avenue, strammell@bpdvt.org, or (802) 540-2107.

We encourage you to keep a copy of the completed complaint form for your reference. If you submit the form in person, we would be happy to make a photocopy for you at that time. When you submit the form, your complaint will be assigned a reference number so that you may track your complaint. You will also be notified of the disposition of your case when the investigation is complete. If you choose to remain anonymous, we will not be able to follow up with you regarding your submission.

Please feel free to contact Shannon Trammell in the office of the Chief of Police, at strammell@bpdvt.org or (802) 540-2107, during normal business hours if you have any questions regarding this complaint process.

Sincerely,

Jon Murad
Chief of Police
Burlington, Vermont

Shakuntala Rao, Co-Chair
Mary Cox, Co-Chair
City of Burlington Police Commission

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**POLICE DEPARTMENT**

CITY OF BURLINGTON

APPENDIX 1**CITIZEN'S COMPLAINT FORM**

You are not required to provide your name or any identifying information. However, please be aware that the complaint investigator's ability to thoroughly investigate a complaint could be impeded if the investigator has no means to follow up with a complainant. If you wish to remain anonymous, please consider providing an anonymous email address below. Please select your reporting preference.

ANONYMOUS? _____ (leave contact info blank) INCLUDE MY CONTACT INFORMATION: _____

YOUR NAME: FIRST _____ LAST _____

MAILING ADDRESS: _____

PRIMARY PHONE #: _____ SECONDARY PHONE #: _____

EMAIL ADDRESS: _____

DATE OF BIRTH: _____

The Burlington Police Commission is collecting information on the age, race/ethnicity and gender of complainants in order to better understand the needs and experiences of community members. Please complete as much information as you feel comfortable providing.

AGE: _____

GENDER: ☐ Female ☐ Male ☐ Non-binary/third gender ☐ Transgender

☐ Prefer not to say ☐ Prefer to self-describe: _____

RACE/ETHNICITY: ☐ Asian/Pacific Islander ☐ Black/African American

☐ Hispanic ☐ Native American ☐ White/Caucasian ☐ Other: _____

DO YOU HAVE A DISABILITY? Yes No

INCIDENT DETAILS

DID THE INCIDENT INVOLVE A BURLINGTON, VT POLICE OFFICER? ☐ Yes ☐ No

DATE OF INCIDENT: _____ TIME OF INCIDENT: _____

LOCATION OF INCIDENT: _____

Enter the address or nearest intersection where the incident took place.

OFFICER(S) INVOLVED (Enter the name(s) and/or badge number(s) of officer(s) involved. If unknown, enter physical descriptions):

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**POLICE DEPARTMENT
CITY OF BURLINGTON****APPENDIX 1**

DESCRIPTION OF INCIDENT: Please describe the incident in detail. Use additional paper if necessary.

DESCRIBE ANY PHYSICAL INJURIES OR TRAUMA SUSTAINED DURING THE INCIDENT:

WERE ANY INJURIES OR TRAUMA CAUSED BY POLICE ACTION? If so, please describe.

WITNESSES TO INCIDENT:

NAME: _____ ADDRESS: _____ PHONE: _____

NAME: _____ ADDRESS: _____ PHONE: _____

NAME: _____ ADDRESS: _____ PHONE: _____

AUDIO/VIDEO RECORDINGS. Are you aware of any audio or video recordings that may have captured the incident? If so, please provide details. _____

SIGNATURE: _____ DATE: _____

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COMPLAINT RECEIVED;
INFORM COMMISSION

CITIZEN COMPLAINTS PROCESS

APPENDIX 2



[Article 65 §190](#) of the Burlington City Charter vests disciplinary authority for members of the police department in the Chief of Police. When the Burlington Police Department receives a [citizen complaint](#) about an employee's conduct, [Department Directive DD40](#) states the Chief of Police shall cause that complaint to be investigated as soon as practical. By [policy agreement](#), the Chief will report to the independent Burlington Police Commission on all complaints.

INJURY TO PERSON?
PUBLIC CONCERN?
INFORM MAYOR

According to [Mayoral Executive Order](#), when a police officer uses force that results in injury to any person or that raises significant public concern, the Chief of Police will formally review the situation with the Mayor and seek the Mayor's concurrence with the Chief's disciplinary determinations. The Chief must obtain the Mayor's concurrence or other final recommendation before reviewing the case with the Police Commission and must share the Mayor's views with the Commission.

SERIOUS COMPLAINT?
VERBAL BRIEF TO
COMMISSION

For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that results in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief will provide the Police Commission with a full verbal briefing of the allegations, the Mayor's views (if applicable), and the Chief's recommended disposition of the case in executive session.

COMMISSION ASSESSES
CHIEF'S DISPOSITION

After receipt of the verbal briefing, the Police Commission may:

- accept the Chief's report and recommended action in full or in part;
- request additional information;
- request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, disposition, or other aspect of the matter, or
- postpone action to a later date, but no later than 14 days from the date of initial receipt of the report

CHIEF FINALIZES
DISPOSITION

The Chief may accept or reject the Police Commission's recommendations, but must explain any rejection. If a majority of the Police Commission disagrees with the Chief's decision, the Police Commission Chair shall report this to the Mayor.

20 VSA § 2401?
CHIEF REPORTS TO VCJC

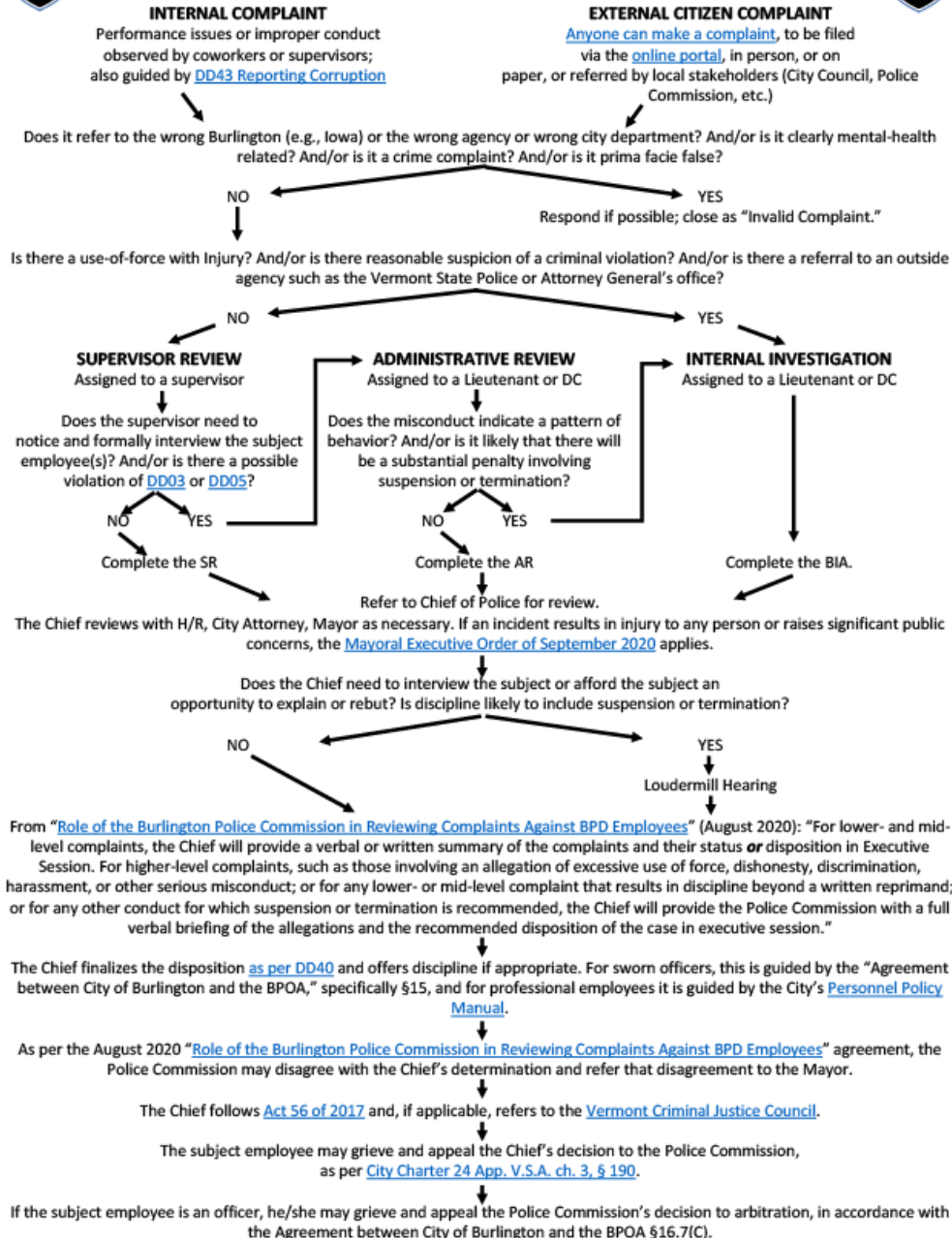
As per the Vermont Criminal Justice Council and Vermont's Act 56, if the conduct alleged in the complaint meets the definitions of Category A, Category B, or Category C conduct in 20 VSA §2401, the Chief will comply with the duty to report described in 20 VSA §2403.

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CITIZEN COMPLAINTS, SUPERVISOR REVIEWS, ADMINISTRATIVE REVIEWS & INTERNAL INVESTIGATIONS

APPENDIX 3



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**POLICE DEPARTMENT
CITY OF BURLINGTON**

APPENDIX 4

**NOTICE OF ADMINISTRATIVE REVIEW / INTERNAL INVESTIGATION
CONFIDENTIAL – DELIVERED BY HAND**

TO: [employee name]
FROM: [supervisor name]
DATE: [date]
RE: Administrative Review #XX of 202X —or— Internal Investigation #XX of 202X

You are hereby notified that you are a [WITNESS or SUBJECT] in an Administrative Review or Internal Investigation. The allegations are as follows:

*Allegation of a possible violation of [Rule XX – Name of Rule]
Allegation of a possible violation of [Rule XX – Name of Rule]*

The investigator anticipated to be assigned to this is:

[name of assigned supervisor]

Additional orders and instructions related to this investigation include:

Any retaliation of hostile treatment toward any employee involved in this matter will be grounds for serious additional discipline, up to and including dismissal.

The Department would like to take this opportunity to remind you of the services available to all employees during times of increased stress or need via the Employee Assistance Program (EAP) or the Vermont Center for Responder Wellness (VCRW). Both are confidential services. The EAP program can be reached by calling 1-800-287-2173; Sonny Provetto at the VCRW can be reached at (802) 377-5137.

I acknowledge receipt of this memorandum: _____

Signature of supervisor making notification / date: _____

Please note that personnel subject to internal investigation have the right to have an attorney or other responsible representative of their choice present during their interview.

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**BURLINGTON POLICE DEPARTMENT
ADMINISTRATIVE INTERVIEW NOTIFICATION
Garrrity Warning**

APPENDIX 5

Employee to be interviewed: _____

Is the employee a **WITNESS** or **SUBJECT** ? *circle one*

Location and date of interview: _____

Before asking any questions, I am advising you of the Burlington Police Department's Administrative Review / Internal Investigation policy and your responsibility as an employee of the BPD.

An Administrative Review or Internal Investigation is about a violation of the Burlington Police Department's Rules and directives, not a criminal matter.

The purpose of this administrative interview is to ask for responses that will help in determining whether disciplinary action is warranted. The answers furnished may be used in disciplinary proceedings that could result in administrative action against you and any other employee of the Burlington Police Department, including reprimand, demotion, suspension, or dismissal.

All questions about the performance of official duties, including workplace conduct, must be answered completely and truthfully. Disciplinary action, including dismissal, may be undertaken if you refuse to answer completely and truthfully. See Department Directive 01 Rule 16 *Conduct Unbecoming* and Rule 26 *Truthfulness*.

Although this review is not about a criminal matter, you have a right to remain silent regarding any issues that may implicate you in a crime. Doing so will end the administrative interview and the matter at hand will be referred to a criminal investigation. No answers given or any information gained in this administrative interview may be admissible against you in any criminal proceeding.

You may have the presence of an attorney or anyone of your choice on a consulting basis—including, if applicable, a representative of your union. However, there will be no interference with the administrative interview by any party.

This administrative interview will be recorded. You are entitled to a copy of the recording.

Do you understand what I have said? _____

Do you understand that by not answering my questions you would be violating Department Directive 01 Rule 16 *Conduct Unbecoming*, i.e. the failure to cooperate with an Internal Investigation? _____

Acknowledgement of Administrative Inquiry Procedures:

I have had the above statement of the Administrative Interview Procedures read to me. I fully understand my responsibilities as an employee of the Burlington Police Department.

SIGNATURE: _____ DATE: _____ TIME: _____

INVESTIGATOR'S SIGNATURE: _____ DATE: _____ BADGE # _____

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BURLINGTON POLICE COMMISSION POLICY**APPENDIX 6****Role of the Burlington Police Commission in Reviewing Complaints Against BPD****Employees****Adopted August 25, 2020**

Purpose: The purpose of this policy is to support principles of fair and impartial policing within the City of Burlington Police Department by adopting a procedure that defines the role of the Burlington Police Commission in reviewing complaints against agency members.

Policy:

1. When a complaint is received by the Burlington Police Department about the conduct of an employee of the Burlington Police Department, the Chief of Police shall cause that complaint to be investigated as soon as practical by an individual or individuals with no interest in or attachment to the issue or officer(s) being investigated. When a complaint is received by members of the Burlington Police Commission, the member of the Burlington Police Commission should encourage the person making the complaint to submit it via the Burlington City website or should personally take the complaint, attempting to capture all the information otherwise contained in the Citizen's Complaint Form. [See Appendix A]
 - a. All complaints, whether generated externally or internally, are referred to as Citizen's Complaints.
 - b. All Citizen's Complaints are documented on a spreadsheet maintained by the Deputy Chief of Administration, or designee.
 - c. Lower-level and some mid-level complaints that are able to be resolved quickly and at first level of supervision, remain as Citizen's Complaints.
 - d. Some mid-level complaints may be escalated to an Administrative Review (AR). An AR is designed to determine if a complaint needs to be elevated to a Bureau of Internal Affairs investigation or if it is able to be handled without a robust personnel investigation.
 - e. Higher-level complaints will either be an Administrative Review or will be escalated to a Bureau of Internal Affairs investigation.
 - f. Lower-level, mid-level, and higher-level complaints will be categorized consistent with the Burlington Police Officers' Association Contract, Article XV, section 15.2. [See Appendix B]
2. The Deputy Chief of Administration, or his/her designee, will maintain a written record of each complaint. That written record will at a minimum include:
 - The name(s) of the employee(s) involved.
 - The date of receipt of the allegation.
 - The date of the alleged incident, if known.
 - The type or nature of the allegation.

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- The name(s) of the person(s) who investigated.
- The final disposition of each complaint.
- How the matter was closed out with the complainant.

APPENDIX 6

In addition, if the complaint involves an allegation of excessive use of force, or an allegation of dishonesty or other serious misconduct, the written record will include:

- All action taken in response to the complaint.
 - Identification of all witnesses, documents, evidence, or other information obtained or consulted in the course of the investigation.
3. The written record of each complaint will be considered confidential. Each Commissioner shall have access to the written records of all complaints upon request to the Chief, subject to the Vermont Public Records Act, and the Burlington Police Officers' Association agreement. Further information may be available to the Commissioner receiving the records upon the completion of a fingerprint-supported background check and the execution of a confidentiality agreement.
 4. The Chief will report to the Police Commission on all complaints against members of the department as follows:
 - Updates about complaints against employees will be shared with the Commission in Executive Session at the first meeting following receipt of the complaint, unless the matter is of such urgency that a special meeting is required. Status updates on the progress of complaints under investigation will be provided to the Commission, as appropriate, and further detail and access to reports/video/etc shall be provided to the Police Commission in Executive Session at the first meeting after the investigation has been completed.
 - For lower- and mid-level complaints, the Chief will provide a verbal or written summary of the complaints and their status or disposition in Executive Session.
 - For higher-level complaints, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level complaint that results in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief will provide the Police Commission with a full verbal briefing of the allegations and the recommended disposition of the case in executive session.
 - The Chief of Police, or his/her designee, will report to the Police Commission in Executive Session on a monthly basis regarding any Use-of-Force incidents. The update shall include demographic data about the officer(s) and subject(s) such as gender, age, and race, and also provide a description of incident.

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APPENDIX 6

- At the request of any member of the Police Commission, the Chief will make the written record available for Executive Session review by the Police Commission, as well as any audio or video footage, written materials, evidence, or other information related to the allegation.
- The Chief of Police, in consultation with the States Attorney's Office, will make the determination of if a complaint needs to be referred outside the Department for investigation of possible criminal conduct. If the complaint has been referred outside of the Department for investigation of possible criminal conduct, the materials will be made available to the Police Commission in Executive Session once a determination has been made that the materials may be disclosed to the Police Commission without adversely affecting any possible prosecution.

5. After receipt of the report described above, the Police Commission may:

- accept the Chief's report and recommended action in full or in part;
- request additional information;
- request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, disposition (including recommending a range of sanctions for the misconduct), or other aspect of the matter, or
- postpone action to a later date, but no later than 14 days from the date of initial receipt of the report.

6. The Chief may accept or reject the Police Commission's recommendations. If the Chief rejects the Police Commission's recommendations, the Chief shall explain to the Police Commission why the recommendations were not accepted. If a majority of the Police Commission disagrees with the Chief's decision, the Police Commission Chair shall report this to the Mayor. Police Commission members should take care to avoid unauthorized disclosure of confidential information. To that end, any Commissioner may consult with the City Attorney's Office to obtain advice related to, among other things, the use and disclosure of confidential information.
7. The Chief of Police is responsible for reporting any misconduct of Burlington Police Department employees that falls under 20 VSA 2401 to the Vermont Criminal Justice Training Council.
8. Whenever the Police Commission becomes aware of allegations of misconduct by the Chief of Police, or if the Police Commission has concerns about the performance of the Chief of Police, the Police Commission Chair shall report this to the Mayor in a timely manner. In the event that the Chief of Police has engaged in misconduct pursuant to 20 VSA 2401, the Police Commission Chair shall report this to the Chair of the Vermont Criminal Justice Training Council.

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APPENDIX 6

9. The Police Commission shall report to the Burlington City Council twice ~~each year regarding~~ this policy. The report shall include a redacted summary of the number, type, and disposition of complaints reported to the Police Commission.

END APPENDIX

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