

ORDINANCE and CHARTER CHANGE JOINT COMMITTEE

Thursday, May 4, 2023

Public Works Conference Room and Via Zoom (Remote)

DRAFT MINUTES

Members Present: Councilor Traverse (Ordinance Committee Chair), Gene Bergman (Charter Change Committee Chair), Councilor Hightower, Councilor Shannon, Councilor Carpenter, Councilor Doherty

Staff Present: Kim Sturtevant (Acting City Attorney), Joseph Dempsey (City Attorney's Office Staff)

Others in Attendance: Council President Paul, Councilor Magee, Councilor Grant, Acting Chief Murad, Chief of Staff Jordan Redell, Dave Maher, Amy Malinowski, Shakuntala Rao, Andy Blanchet, Jessica Oski, Mary Cox

Meeting called to order at 6:07 PM.

1.0 Agenda

Motion to adopt/amend agenda

Motion to Adopt Agenda as is.

Motion by Councilor Carpenter, Seconded by Councilor Shannon

Final Resolution: Motion Passes

Yes: Unanimous

2.0 Review of Committee Materials and Initial Councilor Comments

Carpenter: There has been a lot of discussion over the last two and a half years about the potential charter change. I am less familiar with the other conversations happening and I am hoping to get more familiar with the other work that is still being done on this topic.

Hightower: I am hoping to clarify what specific changes we are looking to cover before getting into the details so we can cover this in an efficient way.

Shannon: I want to examine our current system and identify what we want to change going forward. I was on a committee in 2019 that looked at policies and practices. It will be helpful to see how the current system is not working and how we can address the issues. We also need to think about how these policies will affect the police officers themselves. Maybe the Chief and the union can facilitate getting feedback from the officers themselves.

Bergman: I am looking at the resolution that created this joint committee and I believe that the end date of June 1 is simply too soon and we should move it back. I agree with Joan that we need to have a city-specific solution that addresses both officers and others. I think September is a better end date. There will need to be transparency for any potential new body as well as addressing due process. There is a lot of work to be done, whether we change the role of the Police Commission or create some new body to do the work.

Carpenter: I am also curious how discipline works in the City at-large? How does the HR Department and HR Committee role compare to that of the police?

Traverse: Yes, I believe that we need to create a list of people that we might want to have weigh in on this issue. I know the Police Commission has been working on this and would like to give a presentation on their work. I do have more substantive thoughts, but I would like to allow others from the public to speak. I am hopeful that this committee will find some solutions since there is so much interest in our community right now. From a charter change perspective, I think the two areas that could change would be the sole role of the Chief in disciplining officers and the role of the Police Commission as an appellate body for officers. Other than that, I believe there is a lot of room for ordinance or other changes.

Hightower: I think starting with the issue of disciplinary authority first would be smart as that will likely require a charter change. I am wondering what the best way to get feedback from police officers is and how we can do so quickly. I think we need a policy change that will be clear and still give us flexibility. If we do a charter change, I think it needs to be flexible enough so that we can adjust the policy in the future if the City wants to. In short, I think disciplinary authority should be with the Police Commission, but the charter change should be flexible enough to change in the future.

3.0 Public Comment

Councilor Grant: I will be sending out a link to some trainings from NACOLE. The trainings go through the best practices and the purpose of oversight. As a police commissioner, I was concerned about incorrect information getting out to the public about police oversight. There are no two oversight bodies that are the same, but there are some general principles for us to look at. A good example is the commission in New Haven, Connecticut. I hope we can review this NACOLE trainings as we go forward.

Jordan Redell (Mayor's Chief of Staff): The Mayor plans to share a memo with the committees and commission on these points. First, we should codify the current policies of the Police Commission to accurately reflect what they do right now. We also need to codify the justice procedures so that officers are treated fairly. Finally, we need to address the current issues with the charter regarding the role of the Mayor as the chief executive of the City. Currently, the Chief has the sole authority over the police department and the Mayor believes that is problematic.

Acting Chief of Police Murad: I don't want to take up too much time with all of the documents available online. Use-of-force is a significant concern, but it is not the lion's share of the complaints. We receive about 30 valid citizen complaints a year and all of them are reviewed by the Police Commission. *Note: These documents are available on BPD's website or as attachments to the BoardDocs meeting agenda.* As far as engaging with the police officers goes, I think it is a great idea to engage with the officers directly and not just me and the BPOA. We need to craft good questions before we put out any survey and I don't think we are there yet. Thank you.

Shannon: When we are talking oversight, are speaking only of sworn officers or of all the employees at BPD?

Bergman: I don't see our charge as being limited to only sworn officers.

Shannon: I bring it up because not all BPD employees are in the police union.

Chief Murad: Yes, we have an increasing number of professional, non-sworn staff. Currently, all of the employees of the department, sworn or not, are under the Chief for disciplinary matters. We send all citizen complaints regarding BPD employees to the Police Commission regardless of position. The document on the role of the Police Commission is also available on BPD's website.

Andy Blanchet (AFSCME Local 1674 President): I am glad to see we are looking for change and that is what our members are looking for. I represent the union members at the Howard Center. I want to reiterate what Melo Grant said about making sure the public gets accurate information. I am hopeful for future collaboration going forward on this.

Councilor Grant: The Police Commission reviews complaints, but the Commission does not always agree with BPD determinations. I think that issue is an important one and an opportunity to improve training, policies, and community engagement.

Amy Malinowski: I am here from the People for Police Accountability. I am wondering how we are going to make these forums more accessible and engage everyone. I know it has been said, but I think the Chief should not have sole authority on discipline matters.

Dave Maher: I've lived in the Burlington area for about 50 years. I suggest to create a peer review board within the police department. The board could consist of several senior officers, HR, and maybe a union representative. Appeals from this board could then go on to an oversight board. This would allow people familiar with police work to review complaints and make a discipline recommendation. This would also reduce the number of complaints going to the oversight board.

Hightower: I want to bring up the CNA report recommendations regarding internal affairs. I think it might be best to have HR Director Kerin Durfee speak to how other City departments handle such issues.

Andy Blanchett: Workers at the Howard Center feel like we have a lot of oversight. Our members feel that strong oversight and accountability is very important when our members are interacting with police.

Shakuntala Rao (Police Commission): I suggest having one or several police commissioners be invited regularly to these committee meetings. Also keep in mind the matter of resources as we discuss the role and responsibilities of the Police Commission.

Carpenter: I view the Police Commission as an independent oversight body. I know some people feel that it is not. In 2020-2021 we spent a lot of time on the CNA report. I think it would be helpful to see what that report says about discipline. I am not sure we will have the time or resources to do the same outreach we did a few years ago.

4.0 Councilor Discussion on Next Steps and Meeting

Bergman: Councilor Hightower posited that we should start with discipline. Any further thoughts on that?

Hightower: I think I can share or present on the CNA report findings on this. I also think we should have HR Director Kerin Durfee present on how discipline works for the rest of the City. Then we can decide on whether we want to focus on just sworn officers or all of BPD.

Councilor Grant: We can work on that together. I went to every public engagement at that time and presented CNA findings to the Council when I was a commissioner.

Shannon: I can't attend the next meeting. I would prefer if the next meeting was more informational and outreach-oriented. This topic is evolving and not everyone's view is the same as it was a few years ago.

Traverse: I agree, I think the next meeting should be focused on information gathering. I also agree with Shakuntala that the Police Commission should be an integral part of the process. Are there any other things we should address?

Shannon: We should create a website to host all of the relevant documents and videos of meetings.

Carpenter: Perhaps the Police Commission could have a discussion and appoint one or more people to represent the Commission in these discussions.

Bergman: We have a large number of documents related to discipline that would be good to have included in our information gathering. We have two proposals for police oversight, both that did not succeed, that we could draw from and see what those ideas were.

Hightower: The CNA report pointed out some policies that were not best practice and I think HR Director Durfee has a good idea of best practices for the City and how they might relate to BPD.

Bergman: I have two points to bring up. For outreach, we had success with the All Resident Voting issue and to do something like that again we will need some money. We will need outreach services and translation services. In terms of discipline, the question of qualified immunity is a cloud over the use-of-force discussion. It has had a dramatic impact on policing in the U.S. on a whole and we should keep it in mind.

Hightower: I prefer to not touch qualified immunity, as that is a large issue that we should save for the end given the complexity. I really want to get a good policy done and that is a huge issue.

Doherty: I just want to mention that the Vermont State Police has an internal affairs office and it might be useful to review how their office handles such issues. I also think we should look at how the Fire Department handles disciplinary issues as well.

Shannon: It might be helpful to hear from the Vermont Criminal Justice Council and hear what they have to say on this issue.

Traverse: So for our next meeting: a presentation from Kerin Durfee, a review of the CNA report recommendations, outreach and engagement, and anything else people might think of before then.

5.0 Adjournment

Motion to Adjourn.

Motion by Council Traverse, Seconded by Councilor Bergman

Final Resolution: Motion Passes

Yes: Unanimous

The meeting was adjourned at 7:32 PM.

USE OF FORCE (UOF) OCCURS

Does UOF involve person of color? Notify Mayor.

Is UOF [applicable to video release](#)? (i.e., does it involve death, serious bodily injury, OC / CEW / firearm / baton / LLIMs, public attention).

Officer writes UOF report in Benchmark. Officer uploads AXON.

UOF REVIEW

MONTHLY UOF REPORT

REDACTED VIDEO

UOF reviewer looks at officer's report to ensure it comports with [UOF directive](#) and current training

UOF reviewer returns report to officer with notes requesting clarifications

UOF reviewer forwards to UOF-trained-supervisor for approval -- OR -- flags potentially improper force for supervisor review

UOF supervisor reviews

UOF supervisor returns to UOF reviewer with notes for clarification

UOF supervisor flags for executive staff review or internal affairs

UOF supervisor forwards to DC Ops for finalization

Final approval by DC Ops or flagged for Chief of Police

Deputy Chief Operations (DC Ops) reviews officer's written narrative

DC Ops flags for UOF supervisor review

DC Ops writes summary narrative and breaks down statistics

DC Ops and exec ass't publish consolidated summary narrative as [monthly Use of Force Report](#)

Redaction Specialist (RS) redacts video of applicable UOF

Executive staff reviews

RS adds DC Ops's narrative to redacted video as introductory title card for context

RS posts month's videos to [BPD's YouTube channel](#), to coincide with exec ass't posting [monthly Use of Force Report](#)



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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CITY OF BURLINGTON

In the Year Two Thousand Twenty-Two

An Ordinance in Relation to

Police Oversight and Accountability: Authorities to Police
Commission to alter the Police Disciplinary System

ORDINANCE _____

Sponsor: Public Safety Committee
Public Hearing Dates: _____

First reading: _____

Referred to: _____

Rules suspended and placed in all
stages of passage: _____

Second reading: _____

Action: _____

Date: _____

Signed by Mayor: _____

Published: _____

Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

That the Code of Ordinances of the City of Burlington be and hereby is amended to include Chapter XX:
TITLE OF CHAPTER HERE, which shall read as follows:

Chapter XX Police Commission

ARTICLE I. IN GENERAL

XX-1.

(a) The general purpose of this chapter 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 providing community-based input in the following areas:

- (1) the development of Department policies and procedures;
- (2) review of citizen complaints involving the Department or its members; and
- (3) the discipline process.

(b) Pursuant to Section 183 of the City Charter, the Board of Police Commissioners shall consist of seven (7) legal voters of said city, to be appointed by the City Council with Mayor presiding to serve for three (3) years and until their successors are appointed and qualified.

ARTICLE II. POWERS AND DUTIES

XX-2

To effectuate its purpose, the Police Commission shall, consistent with its authority under Section 184 of the City Charter, review Police Department Policy and Directives as follows:

- (a) At the behest of the Chief of Police or upon the Commission's own initiative, the Commission shall take up various Police Department Policies and Directives and review, evaluate, and audit these Policies and Directives for their impact on police-community relations. The Commission may also

follow this same process in the development of new Policies or Directives for areas where there are no existing Policies or Directives for the Department.

- (b) From this review, the Commission shall propose recommended changes to the Policies and Directives to the Chief of Police.
- (c) The Chief of Police shall incorporate such changes, except where the changes would violate a state or federal law, regulation, or standard; would violate a provision of the City's Collective Bargaining Agreement with officers in the Department; would result in a significant deterioration of public safety; impinge upon an important, clearly identified law enforcement practice; would create substantial liability or exposure to liability for the City as confirmed by the City Attorney; or would make it impossible or impracticable for the Department to follow an identified best practice that is followed by either a majority of Vermont municipalities or a significant number of municipalities of the same size as the City of Burlington.
- (d) If the Chief of Police invokes an exception to a Policy or Directive recommendation to either reject the recommendation or modify the recommendation substantially, the Chief shall report to the Commission, in writing and in a timely manner, the specific exception and the extent to which the Chief is declining the recommendation. The Chief shall not be obligated to communicate in writing if the Chief accepts the Commission's recommendation in whole or substantial part.
- (e) At the Commission's next regularly scheduled meeting following a letter from the Chief notifying the Commission of a rejection or substantial modification to the Commission's recommendation, the Commission shall review the letter and may either accept the Chief's response or appeal the rejection or modification to the Mayor's Office. In this decision, the Commission may engage the Chief for further clarification, but neither the Commission nor the Chief are obligated to such clarification if either feels satisfied with their prior recommendation or response.
- (f) An appeal to the Mayor shall consist of a letter from the Commission laying out the reasons for its recommendation and understanding as to why the stated exemption does not apply. An appeal to the Mayor must be supported by a two-thirds majority of the Commission. The Chief shall have up to 14 days to submit to the Mayor any response to the Commission's appeal.
- (g) Upon receipt of an appeal, the Mayor may request a meeting with the Chief of Police and representatives of the Commission, which may be more than one but shall not constitute a quorum for public meeting purposes. Such meeting shall not be considered a meeting of the Police Commission and shall not be subject to 1 V.S.A. § 312 but shall be considered a deliberative session intended to inform the Mayor of the deliberative issues.
- (h) The Mayor shall render a decision on the appeal in a timely manner. The Mayor's decision shall be final and no further appeals or process shall follow.
- (i) Nothing in this section shall be interpreted to restrict or limit the City Council's independent legislative powers under Section 48 of the City Charter.

XX-3

To effectuate its purpose, the Police Commission shall, consistent with its authority under Section 184 of the City Charter, compile and issue an annual report on citizen complaints and the disposition of such complaints, officer discipline, and other pertinent initiatives the Commissions deems noteworthy by the second meeting of the City Council in the month of November of each calendar year. Such report shall be drafted with assistance from the City Attorney to avoid the use of private or protected information to ensure that the report can be made public. The report shall not express opinions of Commission members on individual cases or pending or potential litigation involving the City. The report will be published to the members of the City Council, the Mayor and the Chief of Police, and representatives of the Commission and the Chief may present further information to the City Council at the Council's invitation.

XX-4

To effectuate its purpose, the Police Commission shall, consistent with its authority under Section 184 of the City Charter review citizen complaints as follows:

- (a) A complaint by a member of the public, hereinafter referred to as "a citizen complaint," concerning the Department or an employee of the Department may be filed either with the Department or directly with the Police Commission. Any citizen complaint filed with the Department shall be forwarded in a timely manner to the Chair of the Police Commission.
- (b) The purpose of the Commission's review of a citizen complaint is to identify gaps in policy, practice, enforcement, and training where police department activities concern community standards and expectations. The review process under this Section is not a disciplinary process and should not be used as such.
- (c) The Chair and Vice-Chair of the Police Commission shall screen each citizen complaint and, if appropriate, present them to the Commission for review. The purpose of this initial screening shall be as follows:
 - (1) To eliminate any complaint that the Chair and Vice Chair agree does not present a valid, relevant, or current issue on which the Commission can reasonably review or investigate; and
 - (2) To screen out discipline or potential discipline issues against an individual officer and to forward those issues to the Chief of Police for disciplinary process consistent with the Chief's disciplinary authority and the Commission's role under XX-5.

If the Chair and Vice Chair refer a citizen complaint to the Chief of Police for discipline and also seek to refer the citizen complaint to the Commission, the Chair and Vice Chair shall stay referral of the

citizen complaint to the Commission until the discipline process, if any, is completed through any grievance process involving the Commission.

- (d) The Commission shall meet in executive session pursuant to 1 VSA 313(a)(1)(D) and/or 1 VSA 313(a)(4) to review all citizen complaints brought forward for review by the Chair and Vice Chair. The Commission shall, by majority vote, direct the Chair to act on each complaint in one or more of the following ways:

- (1) If the allegations do not appear to merit further investigation, the Chair shall close the review and inform the complainant and the Chief of Police that the Commission has elected not to review the complaint any further.
- (2) If the Commission believes further information is necessary, it shall decide by a majority of the Commission how to proceed as laid out in the next section. The Chair will inform the Chief of Police of the Commission's decision.

- (e) If the Commission votes to seek more information, it will also determine what kind of information is necessary and shall be as specific as possible in its request to the Chief of Police. The Commission's options are:

- (1) A review and summary from the Chief of Police or designee in either oral or written form.
- (2) A request for Departmental documents associated with the complaint, including, but not limited to, officer reports, Departmental reports, and any other supporting documents.
- (3) A request to view any camera footage associated with the complaint. or
- (4) Any other specific information associated with the complaint.

- (f) The Chief of Police shall comply with such a request for information in a timely manner, but shall be under no obligation to provide any specific piece of requested information if any of the following are true about the specific piece of information:

- (1) Providing the information would violate a state or federal law;
- (2) Providing the information would violate an active court order;
- (3) Providing the information would violate an agreement with a state or federal law enforcement agency or governmental information sharing service;
- (4) Providing the information would violate or compromise a right of confidentiality held by a third-party; or
- (5) Providing the information would compromise an on-going case or investigation with the understanding that once such danger ended, the information would be provided unless it would violate another portion of this section.

Sharing information under this ordinance shall occur within the confines of an executive session pursuant to 1 VSA 313(a)(1)(D) and/or 1 VSA 313(a)(4) and the Commission's oversight authority as a part of the City pursuant to section 184 of the City Charter. It shall not constitute a waiver of any right that the City may have to claim an exemption to public inspection and copying of the records under the Vermont Public Records Act (1 V.S.A. § 317). Commission possession or review is pursuant to the Department's primary possession under the Vermont Public Record Act.

- 163
164 (g) If the Commission votes by a majority to challenge any denial of access to the requested Departmental
165 information, the City Attorney shall review the withholding and stated basis and shall issue an attorney-
166 client opinion to both the Commission and the Chief as to whether the withholding conforms to this
167 ordinance.
- 168
169 (h) The Commission may elect by majority vote to pause a review of a complaint if a pending prosecution
170 or litigation prevent the Commission from receiving critical pieces of Departmental information that it
171 has requested. The Commission shall inform the complainant of the pause and its anticipated length.
- 172
173 (i) Commissioners shall not communicate with any complainant, witnesses, or other individuals associated
174 with a review, except as such individuals may provide information directly to the Commission during
175 a public meeting or executive session. Any communication necessary between the Commission or a
176 Commissioner and the complainant, witnesses, or other individuals associated with the review shall go
177 through Commission staff, the City Attorney, or conflict counsel.
- 178
179 (j) The Commission shall draft findings, conclusions, and recommendations from its review. The City
180 Attorney shall assist the Commission in the creation of this report. This report shall be transmitted to
181 the Mayor and to the Chief of Police. This report shall be treated as an attorney-client document and
182 attorney-work product as recognized in *Killington, Ltd. v. Lash*, 153 Vt. 628 (1990). The Commission
183 may allow a redacted version of any such report to become public without waiving the confidentiality
184 of the underlying report.
- 185
186 (k) The Commission shall not make any disciplinary recommendations for individual officers in such a
187 report, but the Commission may make recommendations regarding the development or revision of
188 Policy and Directive, enforcement of existing policy and standards, and the implementation of training
189 directed at any issue or concern found by the Commission. The Commission can also recommend
190 larger structural changes and request that the Mayor or City Council consider such changes through a
191 separate, formal communication. The Commission may also recommend that the Chief of Police
192 conduct an internal affairs investigation based on the Report. The Commission may also forward a
193 copy of the report to the Vermont Criminal Justice Council for review and potential investigation under
194 20 V.S.A. § 2403.
- 195
196 (l) The Chief of Police shall implement the recommendations of the report to the extent possible. If the
197 Chief does not, the Chief shall note the recommendations not being adopted and a short basis for why
198 they are not being implemented. Such notice shall be sent to the Commission and the Mayor's Office.
199 The Commission, by majority vote, may choose to respond to the Chief's decision. If the Mayor agrees
200 with the Commission, the Mayor may recommend the adoption to the Chief of Police or refer to the
201 City Council for further consideration or action.

202
203 **XX-5**

204
205 To effectuate its purpose, the Police Commission shall, consistent with its authority under Sections 184 and
206 190 of the City Charter provide community feedback to potential disciplinary matters and provide grievance
207 process to the Police Department as follows:

- 208
209
210 (a) The Chief of Police shall consult with the Police Commission prior to the imposition or non-imposition
211 of discipline against an officer in the Department. The purpose of the consultation is for the
212 Commission to provide any recommendations, input, or information to the Chief it deems necessary to
213 express the Community's values underlying the incident. This process shall be conducted orally during
214 an executive session pursuant to 1 VSA 313(a)(4). At the discretion of the Chief, this consultation may
215 or may not include a discussion of any proposed disciplinary actions.
216
217 (b) To avoid a conflict with a subsequent grievance appeal as outlined in Section 190 of the City Charter,
218 a pre-disciplinary consultation under this section shall not be addressed to the full Commission but a
219 panel of no more than two Commissioners selected by the Chair who shall act as a consultation panel.
220 Any Commissioner that participates in a consultation panel shall not participate in a subsequent
221 grievance review and/or hearing arising from the particular discipline.
222
223 (c) The Chief of Police shall consider and incorporate the recommendations, input, and information from
224 the consultation panel of the Commission in a manner consistent with the Department rules, directives,
225 and standards, State and National Police Standards and Training, Burlington ordinances, Vermont and
226 federal law, and the Collective Bargaining Agreement. The Chief of Police's decision shall be the final
227 decision and shall control any discipline imposed on a Burlington Police Department employee, subject
228 to the grievance procedure outlined in Sections 184 and 190 of the City Charter and any active
229 Collective Bargaining Agreement.
230
231
232
233 (d) If a Burlington Police Department Employee elects to grieve a discipline, the Commission shall hear
234 the grievance in accord with Section 190 of the Burlington City Charter and any active Collective
235 Bargaining Agreement. No Commissioner who participated in a consultation panel underlying the
236 discipline being appealed shall sit in review of the grievance. A quorum for a grievance hearing shall
237 constitute a simple majority of Commissioners who are not otherwise conflicted as defined in Section
238 133 of the Burlington City Charter from reviewing the grievance.
239

240 **XX-6**

241
242 **Confidentiality of Records:**
243

- 244 (a) Professional standards of confidentiality with regard to the work of the Commission shall apply to
245 all information presented to the Commission and to work product generated by the Commission or
246 by the City Attorney or conflict counsel. The Commission shall comply with all Burlington
247 ordinances, Vermont and Federal law, and shall maintain the confidentiality of any and all records
248 and documents received by the Commission in the course of their duties.
249
250 (b) The Commission shall, with the assistance of the City Attorney, draft a Code of Conduct and Ethics
251 for the Commission. This code shall include rules for maintaining confidentiality; protocols for

handling confidential information; recusal; ethical standards for Commission members; and procedures for executive sessions.

- (c) Anytime the Commission discusses a specific matter under review, an individual, or a pending complaint, the Commission shall enter into an Executive Session in accordance with 1 V.S.A. § 313.
- (d) A Commissioner, upon taking office, shall take an oath or pledge to uphold and abide by the Commission's Code of Conduct and Ethics. If there is credible evidence that a Commissioner has violated this oath and pledge, the Chair or Vice Chair of the Commission shall report to the Mayor who may temporarily suspend the Commissioner pending a hearing and vote by the City Council with Mayor presiding under Section 129 of the City Charter. A violation of the Code of Conduct and Ethics shall constitute negligence or bad conduct regardless of the nature of the breach, the intent of the breaching commissioner, or the impact of such a breach.

The following changes (deleted matter in strikeout and new matter underlined) have been petitioned by Burlington voters:

1. *"Shall the Charter of the City of Burlington, Acts of 1949, No. 298 as amended, be further amended to provide for an independent office with the power to investigate and an independent board with the power to hear and decide complaints and impose discipline regarding a police officer's actions or inactions through the amendment of Article 64 Appointment of Police Officers, Section 189 and Article 65 Removal or Suspension, Section 190 as follows:*

189 Members of force to be retained as long as they remain competent.

The members of said regular police force now serving, or who shall hereafter be appointed thereto, shall, after the expiration of the one-year probationary period above provided, and so long as they shall remain competent, efficient and capable in the performance of their respective duties be retained as such, subject to the rules and regulations adopted under Section 184 of this Charter and provided that any member may be removed for cause as hereinafter provided. Any non-probationary member may be disciplined or removed if found to have become incompetent, inefficient or incapable from any cause, is or has been negligent or derelict in their official duty, is guilty of any misconduct in their private or official life, or for any other just cause.

ARTICLE 65. REMOVAL OR SUSPENSION INDEPENDENT COMMUNITY CONTROL BOARD

190 ~~Chief may remove.~~ Composition, jurisdiction, powers, and duties

- (a) ~~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 reduction in rank, or suspend the member without pay for a specified time period in excess of 14 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the chief's notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the charge 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 police chief.~~

- (b) ~~Whenever it shall appear to the mayor that the chief has become incompetent, inefficient, or incapable from any cause, or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the mayor by a responsible person, the mayor may suspend the chief from duty pending a hearing thereon by the city council. The city council shall forth with notify the chief of the charges preferred by them, or of the complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made, shall give the chief reasonable notice of the same, not less than 48 hours, and the city council shall have the power to subpoena witnesses and to administer the oath to such witnesses.~~
- (c) ~~If, upon hearing, the city council shall find such complaints or charges to be well founded, it may dismiss the chief from the force, demote him or her in rank, or suspend him or her without pay for a period not to exceed 60 days. The procedures outlined in this section shall control in the event of any conflict with section 129 of this Charter as pertains to the removal of the chief.~~
- (d) ~~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.~~

(a) Board Established.

A community police department control board consisting of no less than seven (7) members and no more than 9 members is established. The board shall be an independent department of the city. A quorum of the board shall be four (4) members, and when a quorum exists a valid majority is the majority of those present and voting. Members shall be entitled to fair compensation for their time spent working on the board through a stipend that shall be no less than that set by the city's livable wage ordinance in effect at the time.

(b) Board Members Term, Qualifications and Selection.

(1) Term. Board members shall serve a term of three (3) years and shall be eligible to serve for no more than three (3) terms. Notwithstanding this term, members shall serve until their replacement has been qualified and appointed.

(2) Diversity and Qualifications. This board is intended to serve the public and community interest and, in particular and consistent with its jurisdiction, allow for the real redress of harms to those persons who have been historically harmed by police misconduct and those who have been underserved by public safety systems.

(A) Diversity.

The Board shall have a diverse composition, and to the extent possible, have members that represent a diversity of age, race, socioeconomic status, gender, geographic residence, legal immigration status, and professional and lived experience. This shall, to the extent possible, include members who are Black, Indigenous, or other people of color, members who have lived experience with houselessness, mental health conditions, sex work, domestic violence, substance use disorder and/or arrest or conviction records, members who have experience working with an organization that supports Black, Indigenous, or other People of Color, and members who are affiliated with an organization in the field of civil rights, mental health, youth advocacy, LGBTQ advocacy or alcohol and other substance use. Individual members may represent more than one of the categories listed above.

(B) Qualifications.

(i) No member shall have ever been employed by a law enforcement agency. All previous employment and relevant relationships shall be disclosed at the earliest practicable time.

(ii) Members shall be residents of the city of Burlington, regardless of legal immigration status, at the time their board service begins. Members who move outside of the city may remain on the Board for the duration of their term, provided that they still reside in Chittenden County, but may not be reappointed if they reside outside the city at the end of their term.

(3) Selection. Annually, the City Council with Mayor Presiding will choose a set of seven community-based organizations that have an interest in civil rights, immigrant rights, disability rights/mental health, racial equity and social justice, and that also have an interest in the safety of the city and criminal justice reform. Three (3) organizations, to the extent possible, should be Black-led or majority Black membership. Each organization shall appoint a representative to an appointment committee. The committee shall appoint qualified persons to be members of the board. The Director of the Racial Equity Inclusion & Belonging Office, or their designee, and one City Councilor, appointed by the City Council President, shall also be on the appointment committee. This appointment committee shall be considered a public body that is subject to the Open Meeting Law and the Access to Public Records Act. The City Attorney shall convene the first meeting of the committee and shall act as committee staff. The committee shall make appointments based on a selection process that is open to the public with regard to applications, nominations, and selection.

(4) Initial Board. The initial board shall be selected so that no more than half of the members shall serve a three-year term, and the remainder shall serve a four-year term; thereafter, each member shall serve a three year term.

(5) Vacancies. Any vacancy during a term shall not be filled unless the membership of the board drops to five members. The process for filling the seat shall be the same as that for the appointment of members.

(c) Jurisdiction.

(1) Board investigations and adjudication of misconduct. The board has the jurisdiction to discipline or remove a member of the police force, including the chief, as it deems appropriate, including the right to order a reduction in rank or suspension without pay for a specified period, pursuant to section 189, this section, and all applicable rules and regulations related thereto. This jurisdiction includes the right to review and make findings on any incident or complaint against a police officer, including the chief, on complaints of excessive force, abuse of authority, unlawful arrests/stops/searches, other unlawful acts, discourtesy/disrespect, offensive language, theft, discrimination, or untruthfulness by police officers. Any other incident or complaint shall be heard at the discretion of the board. The board shall conduct investigations of alleged police misconduct into those complaints, and in those cases hold hearings and issue final decisions with regard to police officer discipline and removal pursuant to section 189. The procedures outlined in this section shall control in the event of any conflict with section 129 of this Charter as pertains to the removal of the chief.

(2) Department investigation and adjudication of complaints.

(A) In those cases that are not taken up by the board, the investigation shall be conducted by the police department. In such cases, the chief shall investigate and, after appropriate notice and hearing, may take disciplinary action, including but not limited to dismissal, reduction in rank, or suspension without pay for a specified time period. 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.

(B) 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.

(C) Any decision made by the department pursuant to (A) or (B) above shall be submitted to the board for review and approval. If the board disagrees with the department's decision, it shall vacate the decision and refer the complaint to the investigative office for processing in the same manner as complaints heard by the board.

(3) Administrative suspension. Pending any investigation, the chief, in their discretion, may suspend an officer from duty pending the applicable legal process. The board shall have such authority in the case of the chief, based on the nature of the alleged offense. This suspension may be with or without pay.

(4) Retention of records. Officer performance records and or investigatory/disciplinary records, being relevant to the adjudication of complaints shall be retained by the department for a period of seventy-five years, notwithstanding any record retention policy to the contrary.

(5) Hiring. The board shall also have input into the hiring of the police chief and the hiring criteria for police officers.

(d) Powers and Duties

The board shall have the following powers and duties:

(1) To establish rules and regulations for its operation, subject to approval by the city council;

(2) To meet and hold hearings. Disciplinary hearings held by the board at which evidence is taken shall be open to the public, unless otherwise limited by the rule of the board.

(3) To hire employees or consultants, including legal representation.

(4) To administer oaths and take the testimony of any person under oath in connection with the jurisdiction of the board.

(5) To issue subpoenas to compel testimony or access to or production of records, documents and other evidence or possible sources of evidence or the appearance of persons, provided that the subpoena is issued pursuant to an action under the jurisdiction of the board and there is reasonable cause to believe that those materials or the testimony of the person are material to the complaint. Subpoenas issued under this subdivision shall be accompanied with a notice that informs the person that the person has a right to contest the subpoena at a hearing before a quorum of the board, and subpoenas shall be enforced as provided in 3 V.S.A. §§ 809a and 809b.

(6) To discipline or remove a member of the police force, including the chief, and discipline may include a reduction in rank or suspension without pay for a specified period, pursuant to section 189, this section, and all applicable rules and regulations related thereto. Whenever it shall appear to the board that any member of said force has become incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in their official duty, or is guilty of any misconduct in their private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the board by a responsible person against such member, the board may investigate and, after appropriate notice and hearing, dismiss such member from the force, order a reduction in rank, or suspend the member without pay for a specified time period that is deemed appropriate by the board. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the board'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. The board 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 board sufficient, suspend from duty without pay any member of the police force for a period not to exceed 14 days. Any and all appeals of a decision by the board, including whether or not just cause exists to warrant discipline and/or the punishment imposed, shall not be subject to grievance and arbitration but shall

be made on the record established by the board to the Vermont Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure.

(7) To issue public reports on its work. The board shall issue quarterly reports that are publicly available in accessible formats on the number of complaints and the nature of the complaints. It shall also provide an annual report to the city council on all of its duties.

(8) To establish and maintain an investigative office.

(9) To attend and complete training sufficient to perform its duties.

(e) Investigative Office.

(1) If records are not provided or witnesses do not appear on request, the investigative office shall have the power to issue subpoenas to compel testimony or access to or production of records, documents and other evidence or possible sources of evidence or the appearance of persons, provided that the subpoena is issued pursuant to an action under the jurisdiction of the board and there is reasonable cause to believe that those materials or the testimony of the person are material to the complaint. Subpoenas issued under this subdivision shall be accompanied with a notice that informs the person that the person has a right to contest the subpoena at a hearing before a quorum of the board, and subpoenas shall be enforced as provided in 3 V.S.A. §§ 809a and 809b.

(2) The investigative office shall have, on request:

(A) Access to any and all records of the police department, subject to any legal limitations (e.g., expunged records) or legal confidentiality requirements;

(B) Full cooperation of the police department, its members, and relevant City staff (i.e., Human Resources, City Attorney, etc.);

(C) Unfettered access to police command and internal affairs personnel; and

(D) Access to all policies and data created or maintained by the police department.

(3) The investigative office shall have the authority to:

(A) Receive, investigate, and present to the board any complaint against a police officer. Once received, this process should be completed under normal circumstances within thirty days, but because 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 board may authorize an extension of up to sixty days;

(B) In any case that the investigative office or the board does not investigate, monitor any investigation being conducted by the police department with full access to interviews and any other pertinent materials;

(C) Be immediately notified so that an investigator may be sent to the scene of a police shooting or in-custody death;

(D) Be allowed to interview officers less than 48 hours after an incident where deadly force is used;

(E) Access crime scenes, subpoena witnesses and files; and

(F) Set penalties for and enforce against non-compliance with the lawful orders issued pursuant to the duties and powers of the office and board.

(G) Employ a director hired by and at the discretion of the board, and hire other staff or consultants as determined by its director and authorized by the city council, including independent legal counsel to advise the board.

(4) The investigative office shall:

(A) Have an appropriation adequate to conduct the work of the office;

(B) Issue public quarterly reports analyzing complaints, demographics of complainants, status and findings of investigations and actions taken as a result, as well as dispositions;

(C) Establish multiple in-person and online ways to submit, view and discuss complaints, including hearing from the chief or their designee or any other person with pertinent information and receiving recommendations deemed appropriate by that person;

(D) Provide complaint-related information and records to the public (without personally identifiable complainant information);

(E) Be housed in a separate location from the police department.

MEMORNDUM

To: Karen Paul, City Council President
Dan Richardson, City Attorney

From: Jabulani Gamache and Stephanie Seguino, Co-Chairs, Burlington Police Commission

Date: April 22, 2022

Re: Burlington Police Commission Comments on Draft Ordinance on Police Commission Authority

The Burlington Police Commission (BPC) appreciates the opportunity to provide comments on the draft ordinance on BPC authority, developed in response to the City's Resolution on "Police Oversight and Accountability Authorities to Police Commission to Alter the Police Disciplinary System" (adopted 10/18/21 and signed by the Mayor 11/23/21; hereafter the "Resolution").

The Commission's detailed comments are in red in the draft ordinance. In light of our review, the Commission recommends the draft ordinance be revised and requests that the revision be resubmitted to the Commission for review and additional comment.

In addition to our detailed comments, the Commission's general comments on this draft are:

1. The ordinance should not be so detailed as to curtail the necessary flexibility of the Commission to develop and revise its own processes and procedures. Rather, broad strokes of authority should be identified in the ordinance, leaving the details to be outlined in individual policies developed by the Commission itself within the parameters of its delegated authority.
2. As a global comment on the substance of the Ordinance, the Commission reminds all stakeholders that Vermont law as interpreted by our Supreme Court and as reflected in the Charter, "envision[s] a police department created by town government, the operations of which are directed by a chief, *but which is concurrently and ultimately subject to the authority of town government.*" Turnley v. Town of Vernon, 2012 VT 69, ¶ 18 (interpreting the balance of power, under 24 V.S.A. § 1931, between a police chief and the town's legislative body (emphasis added.)). The Burlington Charter §§ 3-184, 3-185, as currently written, also reflects concurrent authority shared between the City Council and the police chief. But consistent with Vermont statute, that concurrent authority is *ultimately* exercised by the City Council, which can in turn delegate its authority to the Commission. Specifically, Section 3-185 makes clear that the "direction and control of the entire police force" is vested in the chief of police "except as...otherwise provided" in the Charter. That exception is significant because the Charter also empowers the City Council to delegate what the Supreme Court characterized as its "ultimate" authority over police department operations to the Commission. Charter § 3-184 ("The Board of Police Commissioners *shall have such authority and responsibility relating to the management of the Police Department, its services, and facilities* as may be delegated from time to time by resolution of the City Council."). The ordinance must more fully reflect the law, under which ultimate authority over the operations of the police department reside with the City Council and, as delegated, with the Commission. Simply put, neither Vermont law nor the Charter support a notion that the chief's authority relating to the management of the Police Department, its services, and facilities, is superior to that of the Commission acting under delegation from the City Council.
3. The ordinance's insertion of the city attorney into the work of the Commission creates a conflict of interest in many circumstances, undermining the independence that is critical to the Commission's oversight role. The ordinance should reflect that the Commission, where necessary, relies on conflict counsel for guidance.
4. The ordinance should support transparency to the full extent permitted by the law.

5. The Resolution appropriates funds for the Commission's work and expressly authorizes the Commission to "conduct investigations." That authority is enough for the Commission to conduct investigations, although future appropriations from the City will be necessary to ensure that delegated authority can be exercised meaningfully by the Commission.
6. In numerous places, this ordinance interposes itself in ways that contradicts existing legislation. The City Council sets policy which it delegates to the Commission. In that regard, this ordinance does not include several key components of the Resolution that addresses the authority of the commission. These should be incorporated:
 - a. The Commission is given the authority to retain outside legal counsel to support independent review of complaints.
 - b. The Commission is given authority to investigate the chief or another appropriate authority and requires that any report of findings be returned to the commission.
 - c. The Commission may speak publicly about citizen complaints in accordance with personnel policies and confidentiality requirements.
 - d. The Commission is allocated a budget for legal services and investigations.
 - e. The Resolution mandates that, under the ordinance, the Commission "will have full and unfettered access to the Department's documentation of the incident, including officer affidavits, all witness statements, other investigative documents, and all videos." The Resolution, as well as best practices identified by NACOLE and other experts in the field, recognize that this level of Commission access is essential to the Commission's fulfillment of its mission under the Charter and State law.
 - f. The Commission is fully and indefinitely authorized, under the Resolution and without need of further legislation such as the Ordinance, to initiate audits, reviews, and evaluations of policies, directives, or data in regard to discipline, racial disparities, or other Commission priorities. The Ordinance should recognize this authority verbatim, and must refrain from adding qualifications or restrictions on to it.

CITY OF BURLINGTON

In the Year Two Thousand Twenty-Two

An Ordinance in Relation to

Police Oversight and Accountability: Authorities to Police
Commission to alter the Police Disciplinary System

ORDINANCE _____

Sponsor: Public Safety Committee
Public Hearing Dates: _____

First reading: _____

Referred to: _____

Rules suspended and placed in all
stages of passage: _____

Second reading: _____

Action: _____

Date: _____

Signed by Mayor: _____

Published: _____

Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

That the Code of Ordinances of the City of Burlington be and hereby is amended to include Chapter XX:

TITLE OF CHAPTER HERE, which shall read as follows:

Chapter XX Police Commission

ARTICLE I. IN GENERAL

XX-1.

(a) The general purpose of this chapter 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 providing community-based input in the following areas:

- (1) the development of Department policies and procedures;
- (2) review of citizen complaints involving the Department or its members; and
- (3) the discipline process.

This should be expanded to cover all complaints, including internal complaints—those filed by officers or deputies within the overseen law enforcement agency—to provide law enforcement officers with a neutral and independent outlet for reporting both officer misconduct and alleged retaliation for reporting misconduct.

(b) Pursuant to Section 183 of the City Charter, the Board of Police Commissioners shall consist of seven (7) legal voters of said city, to be appointed by the City Council with Mayor presiding to serve for three (3) years and until their successors are appointed and qualified.

Terms should be staggered.

ARTICLE II. POWERS AND DUTIES

XX-2

To effectuate its purpose, the Police Commission shall, consistent with its authority under Section 184 of the City Charter, review Police Department Policy and Directives as follows:

- (a) At the behest of the Chief of Police or upon the Commission's own initiative, the Commission shall take up various Police Department Policies and Directives and review, evaluate, and audit these Policies and Directives for their impact on police-community relations and public safety. The Commission may also follow this same process in the development of new Policies or Directives for areas where there are no existing Policies or Directives for the Department.
- (b) From this review, the Commission shall propose recommended changes to the Policies and Directives to the Chief of Police.
- (c) The Chief of Police shall incorporate such changes, except where the changes would violate a state or federal law, regulation, or standard; would violate a provision of the City's Collective Bargaining Agreement with officers in the Department; would result in a significant deterioration of public safety; impinge upon an important, clearly identified law enforcement practice; would create substantial liability or exposure to liability for the City as confirmed by the City Attorney; or would make it impossible or impracticable for the Department to follow an identified best practice that is followed by either a majority of Vermont municipalities or a significant number of municipalities of the same size as the City of Burlington.

Strike section (c). Per NACOLE, civilian oversight boards typically have no statutory mechanism that would resolve a disagreement. Rather, the process is that the department can either accept or reject policy and directive revision. However, the civilian oversight body's (i.e., the Commission's) recommendations are made publicly, so the department would require a compelling reason not to accept and implement the recommendations, just as the civilian oversight body would be required to produce compelling evidence, analysis, and information on national best practices to make it more likely that recommendations are adopted.

Further, the Commission's existing authority under the Charter 3-184 is broader than reflected here:

“The Board of Police Commissioners shall have such authority and responsibility relating to the management of the Police Department, its services, and facilities as may be delegated from time to time by resolution of the City Council. Said Board shall notify the Mayor and the Chief Administrative Officer, in writing, of any and all changes, modifications, or additions to the rules and regulations of the Department.”

This language entitles the Mayor only to "notice" of changes, modifications, or additions. It neither gives the Chief nor the Mayor discretion to reject or change them.

- (d) If the Chief of Police invokes an exception to a Policy or Directive recommendation to either reject the recommendation or modify the recommendation substantially, the Chief shall report to the Commission, in writing and in a timely manner, the specific exception and the extent to which the

Chief is declining the recommendation. The Chief shall not be obligated to communicate in writing if the Chief accepts the Commission's recommendation in whole or substantial part.

While the Charter does not empower the chief to reject Commission recommendations, the Commission acknowledges the value in setting a process under which it can receive and evaluate feedback from the Chief on proposed changes or additions to existing policy before finalizing those changes. This language is a helpful starting point for that advisory dialogue between the Chief and the Commission to precede the Commission's exercise of its ultimate authority. Nonetheless, the draft should substitute "in a timely manner" with "15 days". There should also be a process for the Chief to request an extension to that 15-day feedback window from the Commission. This extension request to the Commission should be made public and should be accompanied by an explanation from the Chief for the need for an extension.

- (e) At the Commission's next regularly scheduled meeting following a letter from the Chief notifying the Commission of a rejection or substantial modification to the Commission's recommendation, the Commission shall review the letter and may either accept the Chief's response or appeal the rejection or modification to the Mayor's Office. In this decision, the Commission may engage the Chief for further clarification, but neither the Commission nor the Chief are obligated to such clarification if either feels satisfied with their prior recommendation or response.

Delete section (e). The mechanism described to reconcile differences on policies is beyond what most other oversight bodies have. As noted above, the best resolution mechanism is a high quality analysis on the part of the Commission and a similarly detailed response from the chief.

- (f) An appeal to the Mayor shall consist of a letter from the Commission laying out the reasons for its recommendation and understanding as to why the stated exemption does not apply. An appeal to the Mayor must be supported by a two-thirds majority of the Commission. The Chief shall have up to 14 days to submit to the Mayor any response to the Commission's appeal.

As per above, this section should be removed, or revised, based on review of other ordinances on this issue and on the fact that it interposes the Mayor as final arbiter in a manner that is not consistent with the Charter's division of authority. In any case, a simple majority would be sufficient since this is merely to request an appeal.

- (g) Upon receipt of an appeal, the Mayor may request a meeting with the Chief of Police and representatives of the Commission, which may be more than one but shall not constitute a quorum for public meeting purposes. Such meeting shall not be considered a meeting of the Police Commission and shall not be subject to 1 V.S.A. § 312 but shall be considered a deliberative session intended to inform the Mayor of the deliberative issues.

As per above, remove this section.

- (h) The Mayor shall render a decision on the appeal in a timely manner. The Mayor's decision shall be final and no further appeals or process shall follow.

As per above, remove this section.

- (i) Nothing in this section shall be interpreted to restrict or limit the City Council's independent legislative powers under Section 48 of the City Charter.

XX-3

To effectuate its purpose, the Police Commission shall, consistent with its authority under Section 184 of the City Charter, compile and issue an annual report on citizen complaints and the disposition of such complaints, officer discipline, and other pertinent initiatives the Commissions deems noteworthy by the second meeting of the City Council in the month of November of each calendar year. Such report shall be drafted with assistance from the City Attorney to avoid the use of private or protected information to ensure that the report can be made public. The report shall not express opinions of Commission members on individual cases or pending or potential litigation involving the City. The report will be published to the members of the City Council, the Mayor and the Chief of Police, and representatives of the Commission and the Chief may present further information to the City Council at the Council's invitation.

Delete "in the month of November." The Commission produces annual reports in July of each year as do other Burlington commissions. November therefore is out of synch. Further, this type of detail in the ordinance does not permit necessary flexibility in carrying out the Commission's work.

As an official commission of the City of Burlington, the Commission is a "public agency" within the meaning of Vermont Public Records Act 1 V.S.A. §§ 315-320. The Commission understands that it has obligations to administer the law consistent with its stated policy that:

"It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action."

Where that law creates exceptions to disclosure that affect the presentation of information called for in the annual report, the Commission understands that the law contains mechanisms to achieve the balance between the public's right to know and personal privacy. See 1 V.S.A. § 318(e) (allowing for redaction of information that is exempt from public disclosure while other nonexempt information can be disclosed).

Consistent with the law's requirements, the report has been and should continue to be a public record available for public inspection and copying. The city attorney should not be involved in the preparation of this report.

Complaint policy and the Vermont Public Records Act should guide the preparation of such reports as regards confidentiality.

However, the ordinance should include language that chiefs must provide a written response as to why or why not they agree/disagree with Commission findings on complaints, and those responses should become public in annual reports. This is key to transparency, accountability, and the independent role of the commission.

XX-4

To effectuate its purpose, the Police Commission shall, consistent with its authority under Section 184 of the City Charter review citizen complaints as follows:

- (a) A complaint by a member of the public, hereinafter referred to as “a citizen complaint,” concerning the Department or an employee of the Department may be filed either with the Department or directly with the Police Commission. Any citizen complaint filed with the Department shall be forwarded in a timely manner to the Chair of the Police Commission.

Delete “by a member of the public, hereafter referred to as a citizen complaint” and “citizen” in last sentence. Maintain current practice and policy in which all Commissioners receives complaints at the same time as the BPD. Add language to provide a process by which the Commission receives transcript of verbal complaints to the BPD within 3 days.

Accommodate possibility of co-chairs of commission.

- (b) The purpose of the Commission’s review of a citizen complaint is to identify gaps in policy, practice, enforcement, and training where police department activities concern community standards and expectations. The review process under this Section is not a disciplinary process and should not be used as such.

This deviates from the current complaint policy which was authorized and sanctioned by the police chief and then city attorney. The role of a review oversight body such as ours is to review disposition of complaints as regards not only gaps in policy but also assessment of the extent to which policy was adhered to. Therefore, the ordinance should reflect this role, with the Commission’s purpose being to weigh in on disciplinary issues and in particular to identify cases in which policies were not followed.

- (c) The Chair and Vice-Chair of the Police Commission shall screen each citizen complaint and, if appropriate, present them to the Commission for review. The purpose of this initial screening shall be as follows:

- (1) To eliminate any complaint that the Chair and Vice Chair agree does not present a valid, relevant, or current issue on which the Commission can reasonably review or investigate; and

- (2) To screen out discipline or potential discipline issues against an individual officer and to forward those issues to the Chief of Police for disciplinary process consistent with the Chief's disciplinary authority and the Commission's role under XX-5.

The Commission should determine its own process for triage of complaints. The full commission receives all complaints now and that should continue. It should be the collective decision of Commissioners on which complaints to review or not. Delete (2). To exclude the commission from complaints that may have disciplinary implications would essentially undermine and negate the role of the civilian oversight body.

If the Chair and Vice Chair refer a citizen complaint to the Chief of Police for discipline and also seek to refer the citizen complaint to the Commission, the Chair and Vice Chair shall stay referral of the citizen complaint to the Commission until the discipline process, if any, is completed through any grievance process involving the Commission.

As per above, this should be struck.

- (d) The Commission shall meet in executive session pursuant to 1 VSA 313(a)(1)(D) and/or 1 VSA 313(a)(4) to review all citizen complaints brought forward for review by the Chair and Vice Chair. The Commission shall, by majority vote, direct the Chair to act on each complaint in one or more of the following ways:
- (1) If the allegations do not appear to merit further investigation, the Chair shall close the review and inform the complainant and the Chief of Police that the Commission has elected not to review the complaint any further.
 - (2) If the Commission believes further information is necessary, it shall decide by a majority of the Commission how to proceed as laid out in the next section. The Chair will inform the Chief of Police of the Commission's decision.

While it is useful to have the complaint process outlined in detail, the Commission is in the process of revising that process based on our experience in the last two years and input from NACOLE. Defining the process is the role of the commission and should not appear in an ordinance since by so doing, it reduces the flexibility of the Commission to revise processes as deemed necessary.

The current complaint policy should be followed in regards to assessing the level of the complaint (low, medium or high) with the exception that the Commission determines the level of the complaint rather than the chief. The goal of an independent civilian oversight body is to promote transparency, accountability, and trust, the Commission's role should be able to request an investigation of any complaint, and in particular those it deems high level. Most oversight agencies do investigations of all complaints.

- (e) If the Commission votes to seek more information, it will also determine what kind of information is necessary and shall be as specific as possible in its request to the Chief of Police. The Commission's options are:
- (1) A review and summary from the Chief of Police or designee in either oral or written form.
 - (2) A request for Departmental documents associated with the complaint, including, but not limited to, officer reports, Departmental reports, and any other supporting documents.
 - (3) A request to view any camera footage associated with the complaint. or
 - (4) Any other specific information associated with the complaint.

This section should be revised to reflect the City Council resolution which gives the Commission unfettered access to any information the BPD avails itself of in conducting investigations of complaints. The Commission should have the opportunity to require an independent investigation if it sees fault with an investigation that BPD conducted.

- (f) The Chief of Police shall comply with such a request for information in a timely manner, but shall be under no obligation to provide any specific piece of requested information if any of the following are true about the specific piece of information:
- (1) Providing the information would violate a state or federal law;
 - (2) Providing the information would violate an active court order;
 - (3) Providing the information would violate an agreement with a state or federal law enforcement agency or governmental information sharing service;
 - (4) Providing the information would violate or compromise a right of confidentiality held by a third-party; or
 - (5) Providing the information would compromise an on-going case or investigation with the understanding that once such danger ended, the information would be provided unless it would violate another portion of this section.

Sharing information under this ordinance shall occur within the confines of an executive session pursuant to 1 VSA 313(a)(1)(D) and/or 1 VSA 313(a)(4) and the Commission's oversight authority as a part of the City pursuant to section 184 of the City Charter. It shall not constitute a waiver of any right that the City may have to claim an exemption to public inspection and copying of the records under the Vermont Public Records Act (1 V.S.A. § 317). Commission possession or review is pursuant to the Department's primary possession under the Vermont Public Record Act.

Replace "timely manner" with 10 days. The Commissioners have expressed an interest in moving toward best practice as defined by NACOLE in which hearings are held in public session with appropriate steps taken to protect confidentiality as required by policies and the BPOA contract. As written this section is at odds with the goal of transparency and accountability and should be revised to reflect best practices.

- (g) If the Commission votes by a majority to challenge any denial of access to the requested Departmental information, the City Attorney shall review the withholding and stated basis and shall issue an attorney-client opinion to both the Commission and the Chief as to whether the withholding conforms to this ordinance.

The City Council resolution delineates the Commission shall have unfettered access to all information the BPD had when it made their disposition of the case. That should be reflected in this ordinance. The ordinance's insertion of the city attorney into the work of the Commission creates a conflict of interest in many circumstances, undermining the independence that is critical to the Commission's oversight role. The ordinance should reflect that the Commission, where necessary, relies on conflict counsel for guidance.

- (h) The Commission may elect by majority vote to pause a review of a complaint if a pending prosecution or litigation prevent the Commission from receiving critical pieces of Departmental information that it has requested. The Commission shall inform the complainant of the pause and its anticipated length.
- (i) Commissioners shall not communicate with any complainant, witnesses, or other individuals associated with a review, except as such individuals may provide information directly to the Commission during a public meeting or executive session. Any communication necessary between the Commission or a Commissioner and the complainant, witnesses, or other individuals associated with the review shall go through Commission staff, the City Attorney, or conflict counsel.

Section (i) should be deleted. The Commission's practice is to communicate directly with complainants to: 1) acknowledge the complaint, 2) provide a copy of the complaint policy, and 3) provide updates on status of complaint. The language in (i) oversteps the role of an ordinance. Details on how complaints are handled should be in the complaint policy, not the ordinance. The ordinance's insertion of the city attorney into the work of the Commission creates a conflict of interest in many circumstances, undermining the independence that is critical to the Commission's oversight role.

These comments are consistent with NACOLE's recommendations. According to NACOLE, the complaint process is more likely to be perceived as fair and transparent if complainants receive regular updates regarding their complaint and can obtain status updates at any time. Communicating with complainants by providing status updates throughout the process is one way that civilian oversight agencies can assure members of the public that they are handling their complaints seriously and actively.

Once a complaint has been adjudicated or after a disciplinary decision has been made, the civilian oversight agency should invite complainants to an in-person closeout meeting. Closeout meetings allow the oversight agency to describe the investigative process, explain how and why decisions were made, and demonstrate that the complaint was resolved neutrally and impartially. In turn, this promotes legitimacy and public confidence in the oversight process. Closeout meetings furthermore provide the oversight agency with an opportunity to collect information regarding how complainants feel about the complaint process as a whole. Once a complaint has been adjudicated or after a disciplinary decision has been made, the civilian oversight agency should invite complainants to an in-person closeout meeting.

More generally, it is the Commission that should lay out the complaint process in its policy—again, allowing for needed flexibility—rather than stipulating such details in an ordinance.

- 343
344 (j) The Commission shall draft findings, conclusions, and recommendations from its review. The City
345 Attorney shall assist the Commission in the creation of this report. This report shall be transmitted to
346 the Mayor and to the Chief of Police. This report shall be treated as an attorney-client document and
347 attorney-work product as recognized in *Killington, Ltd. v. Lash*, 153 Vt. 628 (1990). The Commission
348 may allow a redacted version of any such report to become public without waiving the confidentiality
349 of the underlying report.

350
351 The ordinance's insertion of the city attorney into the work of the Commission creates a conflict of
352 interest in many circumstances, undermining the independence that is critical to the Commission's
353 oversight role. Such reports should continue to be developed with input from conflict counsel only, who
354 shall provide guidance on redaction for purposes of making findings public.
355

- 356 (k) The Commission shall not make any disciplinary recommendations for individual officers in such a
357 report, but the Commission may make recommendations regarding the development or revision of
358 Policy and Directive, enforcement of existing policy and standards, and the implementation of training
359 directed at any issue or concern found by the Commission. The Commission can also recommend
360 larger structural changes and request that the Mayor or City Council consider such changes through a
361 separate, formal communication. The Commission may also recommend that the Chief of Police
362 conduct an internal affairs investigation based on the Report. The Commission may also forward a
363 copy of the report to the Vermont Criminal Justice Council for review and potential investigation under
364 20 V.S.A. § 2403.
365

366 The Commission should be able to recommend coaching for officers who are the subject of complaints
367 and should be able to provide feedback on proposed discipline.
368

369 Further, this sentence should be deleted "The Commission may also recommend that the Chief of Police
370 conduct an internal affairs investigation based on the Report." As written, this would require the
371 Commission to engage in decision-making on a complaint before an investigation is actually done. The
372 Commission needs as many facts as possible when determining next steps in and therefore, access to that
373 information, based on an investigation, should be available prior to issuing a report on a complaint.
374

- 375 (l) The Chief of Police shall implement the recommendations of the report to the extent possible. If the
376 Chief does not, the Chief shall note the recommendations not being adopted and a short basis for why
377 they are not being implemented. Such notice shall be sent to the Commission and the Mayor's Office.
378 The Commission, by majority vote, may choose to respond to the Chief's decision. If the Mayor agrees
379 with the Commission, the Mayor may recommend the adoption to the Chief of Police or refer to the
380 City Council for further consideration or action.
381

382 Delete "short" in the second line of section (l). If the chief disagrees in whole or in part with the Commission's
383 recommendations, he/she should submit **a written report** to the Commission within 15 days. Requiring a
384 majority vote for the commission to respond to the chief's decision goes beyond what should be in an
385 ordinance. This should be part of the Commission's complaint policy. Include a phrase that indicates the mayor
386 will inform the Commission of the reasons for his or her decision with regard to the adoption of the
387 Commission's findings.

This is also one of several examples of a section in the draft ordinance where the Chief's authority is unlawfully elevated above that of the Commission, subject to arbitration by the Mayor. It is, therefore, inconsistent with the Charter, as interpreted in light of the Supreme Court's recognition that state law establishes a system in which "ultimate" authority over the direction of the police department rests with Town government, not with the chief of police. *See Turnley v. Town of Vernon*, 2012 VT 69, ¶ 18. Under Burlington's City Charter, the City Council "shall make rules for the government of the entire police force" and may, by resolution, delegate that authority to the Commission. Charter § 3-184. The mayor's authority under the Charter is limited only to receiving notice of the "changes, modifications, or additions to the rules and regulations of the Department" made by the City Council or the Commission as the case may be. *Id.*

XX-5

To effectuate its purpose, the Police Commission shall, consistent with its authority under Sections 184 and 190 of the City Charter provide community feedback to potential disciplinary matters and provide grievance process to the Police Department as follows:

The Commission requests a legal opinion on who can grieve – complainants as well as officers?

- (a) The Chief of Police shall consult with the Police Commission prior to the imposition or non-imposition of discipline against an officer in the Department. The purpose of the consultation is for the Commission to provide any recommendations, input, or information to the Chief it deems necessary to express the Community's values underlying the incident. This process shall be conducted orally during an executive session pursuant to 1 VSA 313(a)(4). At the discretion of the Chief, this consultation may or may not include a discussion of any proposed disciplinary actions.

The Commission will reserve further comment on those sections of the ordinance that deal with the Commission's role in determining discipline until such time as it receives the requested opinion on the question of who may access the appeal process.

- (b) To avoid a conflict with a subsequent grievance appeal as outlined in Section 190 of the City Charter, a pre-disciplinary consultation under this section shall not be addressed to the full Commission but a panel of no more than two Commissioners selected by the Chair who shall act as a consultation panel. Any Commissioner that participates in a consultation panel shall not participate in a subsequent grievance review and/or hearing arising from the particular discipline.

This should be revised such that a 4-person consultation panel reviews discipline, with 3 Commissioners then available to serve on a grievance panel.

- (c) The Chief of Police shall consider and incorporate the recommendations, input, and information from the consultation panel of the Commission in a manner consistent with the Department rules, directives,

and standards, State and National Police Standards and Training, Burlington ordinances, Vermont and federal law, and the Collective Bargaining Agreement. The Chief of Police's decision shall be the final decision and shall control any discipline imposed on a Burlington Police Department employee, subject to the grievance procedure outlined in Sections 184 and 190 of the City Charter and any active Collective Bargaining Agreement.

- (d) If a Burlington Police Department Employee elects to grieve a discipline, the Commission shall hear the grievance in accord with Section 190 of the Burlington City Charter and any active Collective Bargaining Agreement. No Commissioner who participated in a consultation panel underlying the discipline being appealed shall sit in review of the grievance. A quorum for a grievance hearing shall constitute a simple majority of Commissioners who are not otherwise conflicted as defined in Section 133 of the Burlington City Charter from reviewing the grievance.

XX-6

Confidentiality of Records:

- (a) Professional standards of confidentiality with regard to the work of the Commission shall apply to all information presented to the Commission and to work product generated by the Commission or by the City Attorney or conflict counsel. The Commission shall comply with all Burlington ordinances, Vermont and Federal law, and shall maintain the confidentiality of any and all records and documents received by the Commission in the course of their duties.
- (b) The Commission shall, with the assistance of the City Attorney, draft a Code of Conduct and Ethics for the Commission. This code shall include rules for maintaining confidentiality; protocols for handling confidential information; recusal; ethical standards for Commission members; and procedures for executive sessions.
- (c) Anytime the Commission discusses a specific matter under review, an individual, or a pending complaint, the Commission shall enter into an Executive Session in accordance with 1 V.S.A. § 313.
- (d) A Commissioner, upon taking office, shall take an oath or pledge to uphold and abide by the Commission's Code of Conduct and Ethics. If there is credible evidence that a Commissioner has violated this oath and pledge, the Chair or Vice Chair of the Commission shall report to the Mayor who may temporarily suspend the Commissioner pending a hearing and vote by the City Council with Mayor presiding under Section 129 of the City Charter. A violation of the Code of Conduct and Ethics shall constitute negligence or bad conduct regardless of the nature of the breach, the intent of the breaching commissioner, or the impact of such a breach.

The Commission has indicated it will develop a code of ethics. The draconian language on holding a hearing if a person even inadvertently violates the code (such as by hitting reply to all on an email by mistake, thus violating confidentiality) would deter people from being willing on the Commission. This portion of the

478 ordinance should be struck, retaining only the first sentence of (d). The Commission questions whether such
479 language applies to any other Burlington commissions.
480
481

DRAFT

Resolution Relating to

POLICE OVERSIGHT AND ACCOUNTABILITY AUTHORITIES TO POLICE COMMISSION TO ALTER THE POLICE DISCIPLINARY SYSTEM

RESOLUTION 7.09

Sponsor(s): Public Safety Committee

Introduced: 10/18/21

Referred to: _____

Action: amended; adopted

Date: 10/18/21

Signed by Mayor: 11/23/21

CITY OF BURLINGTON

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

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

1 That WHEREAS, on June 29, 2020, the City Council adopted a resolution entitled “Racial Justice
2 Through Economic and Criminal Justice” that included a request that the Charter Change Committee propose
3 charter amendments that “authorize the Police Commission to approve by simple majority any disciplinary
4 decision, including a decision of non-discipline, the Police Chief wishes to implement in a use-of-force case,
5 with such approval including the right to impose a new and different discipline as the Commission deems
6 appropriate;”¹ and

7 WHEREAS, on Sept. 8, 2020, the City Council adopted a resolution entitled “Protesters and Public
8 Safety” that acknowledged “the need to change current policies regarding discipline and oversight of our
9 police” and requested “that the Charter Change Committee review options for who makes and reviews police
10 disciplinary decisions and report on the various options to the full Council in October;”² and

11 WHEREAS, the Charter Change Committee, along with many residents and local activist groups,
12 brought forward a civilian oversight charter change for inclusion on the March 2021 Town Meeting Day
13 ballot; and

14 WHEREAS, pursuant to the city charter, the Mayor vetoed the Council’s 7-5 vote to place that charter
15 change proposal for an Independent Community Control Board and Investigative Office to deal with police
16 discipline and policy, and that veto was sustained; and

17 WHEREAS, the City Council and the Administration, agree that the current charter’s provisions on
18 police discipline should be amended to better address complaints about police misconduct, disciplinary
19 decisions and the accountability of police officers, as well as Police Department policies and officers’ actions,
20 thereby helping to achieve the common goal of delivering the most professional and effective public safety
21 services possible; and

22 WHEREAS, the National Association of Civilian Oversight of Law Enforcement (“NACOLE”) -
23 website outlines “What are the steps a community should take in establishing effective police oversight” by
24 encouraging having ‘a core group of citizens who are sufficiently concerned about the issue...who seek out

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training, support and resources prior to establishing a formal planning or advisory committee,” and goes on to recommend and support that communities “fram[e] the public discussion and invit[e] broad community input emphasizing that the purpose is improving trust between police and the community by ensuring public confidence in the agency through accountability and transparency” with the “end goal...to deliver the most professional and effective police services possible in the community”³; and

WHEREAS, the National Association of Civilian Oversight of Law Enforcement (“NACOLE”) – endorsed Guidebook states that is important to “establish a planning or advisory committee composed of elected officials, legal advisors, police officials, police union representatives, and community advocates ‘to effectively work together on “sources of resistance and issues of contention and begin to address the concerns and neutralize the resistance”⁴; and

WHEREAS, research shows that effective civilian oversight can have important benefits:

- where citizens who interact with the police experience a safe space for expressing concerns, feeling validated by the independent oversight, and holding the police department accountable for officers’ behavior; and
- where police officers, leadership, and union representatives have found that oversight improves their relationship with the community, strengthens the quality of the department’s investigations of alleged misconduct, reassures the public that the process is fair and thorough, and improves officer conduct; and
- where the community is safer because there is greater accountability and transparency⁵; and

WHEREAS, further, for an oversight model to be truly effective, it must be proactive, independent, community driven, empowered, transparent, individualized, an investment in our community, and an iterative process⁶; and

WHEREAS, the City Council and Administration agree that there is a need to revise the current civilian oversight model and to build community trust, which must be addressed with both expediency and an authentic collaborative effort--with all stakeholders at the table as colleagues in the planning and implementation process; and

WHEREAS, it was NACOLE’s recommendation that the Police Commission be more community engaged in interacting with and educating the public on policing and public safety; and

WHEREAS, the City Council, together with the Administration, recognizing that a charter change will take time, from being placed on a ballot, to the legislative and administrative processes in Montpelier, as well

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as the unknown of what a charter change will look like at the end of this process, and that responsive action is needed now, may delegate to the Police Commission, certain authority about management of the Police Department through its authority in the City Charter, Article 62, Section 184—Same-powers and duties, which states:

The city council shall make rules and regulations for the government of the entire police force . . . the board of police commissioners shall have such authority and responsibility relating to the management of the police department, its services, and facilities, as may be delegated from time to time by resolution of the city council.

BE IT FURTHER RESOLVED that the City Council requests that the City Attorney's Office, as one of its top priorities, draft by November 2021 an ordinance for a first reading that would delegate, to the extent possible consistent within legal constraints, authority to manage complaints about police conduct to the Police Commission to include language:

- codifying that the Commission will review all civilian complaints of alleged police misconduct. The Commission will determine which complaints are low-, medium-, and high-level. In conducting reviews, the Commission will have full and unfettered access to the Department's documentation of the incident triggering the complaint, including officer affidavits, all witness statements, other investigative documents, and all videos. This information shall be forthcoming to the Commission within 15 days of a formal complaint being filed; and
- giving the Commission the authority to retain independent legal counsel to support its review of complaints; and
- giving the Commission the authority to request an investigation into an incident by the Chief of Police or another appropriate authority and requiring that a report of any investigative findings be returned to the Commission; and
- authorizing the Commission to have the ability to review incidents, determine if they will investigate a complaint irrespective of the Chief or Department, and give input and make recommendations on investigation results and remedies, including proposed discipline for officers. This would include giving the Commission the authority to hire an independent investigator to conduct or review allegations of serious conduct or harm; and
- giving the Commission the authority to issue a recommendation of remedy for a complaint, including a recommendation to the Police Chief on discipline for an officer; requiring the Chief to consult with the

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Commission and, in the absence of agreement, issue a written memorandum detailing the reasons for which the Chief disagrees with the Commission's recommendation of remedy for a complaint within 15 days. Further resolution would then be led by the Mayor, the City Council's Public Safety Committee, and an independent third body, who will take testimony from both the Police Commission and the Chief or other representative of the Department, in advance of delivering a written final determination regarding the dispute; and

- tasking the Commission to issue an annual report on complaints, discipline, and other activities, including the Commission's recommendations as well as the final disposition of complaints; and
- the ordinance should contain language encouraging and supporting the ability of Burlington Police Commission to speak publicly to citizen complaints in accordance with personnel policies and confidentiality requirements; and

BE IT FURTHER RESOLVED that the City Council requests that said ordinance be referred to the Ordinance Committee as its top priority for review and public input and be returned to the full Council for a second reading no later than Monday, December 20, 2021; and

BE IT FURTHER RESOLVED that the Administration will introduce to the FY22 budget an amendment authorizing up to \$25,000 from the unassigned fund balance for the Police Commission for the Commission's legal costs and to conduct independent investigations, if the Commission deems them necessary; and

BE IT FURTHER RESOLVED that the City Council authorizes the Police Commission to initiate audits, reviews, and evaluations of policies, directives, or data; in regard to discipline, racial disparities, or other Commission priorities.

BE IT FURTHER RESOLVED that the City Council tasks the Charter Change Committee to hold meetings, allowing for community and stakeholder input, with the question of moving disciplinary authority from the Chief of Police to a body that is independent from the Burlington Police Department, and that may include the Burlington Police Commission, and asks that language to do so be referred back to the Council in time to allow the Council to place such a Charter change consideration on the March 2022 ballot, if the Council so chooses

¹Resolution: Racial Justice through Economic and Criminal Justice, June 29, 2020, signed by the Mayor, July 13, 2020

²Resolution: Protesters and Public Safety, September 8, 2020, signed by the Mayor, September 21, 2020

NACOLE website: <https://www.nacole.org>

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POLICE OVERSIGHT AND ACCOUNTABILITY AUTHORITIES TO
POLICE COMMISSION TO ALTER THE POLICE DISCIPLINARY
SYSTEM

- 116 ⁴ NACOLE, Brian Buchner, Liana Perez, Cameron McElhiney, Eduardo I. Diaz, ed. Guidebook for the Implementation of New and Revitalized
117 Police Oversight, 2016, pg 12
118 ⁵Peter Finn, "Citizen Review of Police: Approaches and Implementation," National Institute of Justice, March
119 2001. <http://www.ncjrs.gov/pdffiles1/nij/184436.pdf>
120 ⁶NACOLE website: <https://www.nacole.org/>
121
122
123 *Amended; adopted LO 101821*

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Thomas Musinski, City Attorney's Office
Charter Change Committee

ORIGINAL

RESOLUTION RELATING TO

Police..Oversight..And..Accountability..Authorities To Police Commission To Alter The
Police Disciplinary System

As amended
Adopted by the City Council

October..18.....20..21.....

..... Clerk

Approved...November 20, 2021.....

..... Mayor

Vol. Page

Attest

Lori Olberg
Lori Olberg
Licensing, Voting and Records Coordinator

* * * * *



Office of Mayor Miro Weinberger

MEMORANDUM

To: City Council
From: Mayor Miro Weinberger
Date: November 15, 2021
Re: Signing statement regarding October 18, 2021 Resolution 7.09 Police Oversight and Accountability

The Council's October 18 Resolution: Police Oversight and Accountability, Authorities to Police Commission to Alter the Police Disciplinary System was a long and complex resolution with a number of unusual provisions and significant implications for our work together to strengthen public safety in this community. This statement 1) explains my decision to sign the resolution and 2) communicates my process requests moving forward. With committee meetings beginning this week, I respectfully ask Councilors to consider these requests if you share my interest in reaching a consensus, unlike the last time a Police Oversight resolution was considered by the Council last March.

Explanation of my approval of this resolution:

After careful review, I signed the October 18, 2021 Police Oversight and Accountability resolution because it is generally consistent with some of my long-held beliefs about our police oversight system, specifically:

- **Our Charter should be amended to add checks and balances to the isolated authority over discipline that the Chief of Police wields in our current system.** I believe it is critical that the Chief continue to have a leadership role in the disciplinary process but believe the current insulation of the Chief's disciplinary decisions from any other authorities is a byproduct of a long-gone era and not consistent with the public's expectations of police departments today. I believe my position is consistent with language starting on line 107 of the resolution that charges the Charter Change committee with engaging the public "with the question of moving disciplinary authority from the Chief of Police to a body that is independent from the Burlington Police Department" because, again, I do support shifting some of the near-absolute authority from the Chief. However, the Chief remains the day-to-day administrator of the police department, and I cannot support any resolution that removes so much of his authority that the Chief no longer has a leadership role in discipline or the executive tools necessary to effectively manage the department.
- **We should fully explore additional ways to appropriately strengthen our existing Police Commission's role in the disciplinary process.** Charter changes are a slow and uncertain process. I am supportive of the directional concept in the resolution that we should explore what further changes, beyond the significant strengthening of the Commission that has already been completed since 2015, can lawfully and effectively be implemented at this time. While we

may be nearing the limits of what can be done within the constraints of the Charter already, I do not object to reviewing this further.

My signing of this resolution should not be interpreted as the Administration's endorsement of all of the possible transfers of authority to the Police Commission as listed in the resolution (beginning on line 67). The resolution expressly acknowledges that "legal constraints" may limit the ability of the Council to make these delegations without a Charter Change. I am withholding my endorsement of any of these delegations until that legal review is completed and considered. Specifically, it is important to recognize that, per the charter, the Police Commission is part of the City of Burlington Corporate, and thus there are structural and significant legal limitations to the independence this resolution supports.

Process from here for a new ordinance and Charter Change regarding police oversight:

The process that Councilors pursued for the Charter Change that reached my desk last December was problematic in that the Police Department's command staff, and the Burlington Police Officer's Association, were provided no opportunity to give input into the drafting of the language, and the City Attorney's professional advice and concerns were largely ignored. The Police Chiefs, the police union, and the City Attorney are key stakeholders in the policies under consideration in this resolution and should be heard from throughout the deliberative process going forward for both the resolution's proposed new ordinance as well as the Charter Change it contemplates.

Agenda Item 6.03

Police Commissioners' Comments on Charter Change Committee Proposal for Civilian Oversight of Police

December 6, 2020

This document summarizes comments Police Commissioners made on the Charter Change proposal for civilian oversight at the December 3, 2020 Joint Committee meeting.

1. **Rather than create a new structure, the Police Commission (PC) already exists and could fulfill the responsibilities of a civilian oversight body instead of creating a new city department.**
 - a. The Police Commission has built expertise over time on policies and other policing issues, thus preparing it to take on a more substantive citizen oversight role on police disciplinary matters. Further, the Police Commission already performs many of the functions that are recommended for an oversight board (see Blackwood memo to City Charter Change Committee, Nov. 9, p. 14).
 - b. There seems to be a misconception that the Police Commission is internal to the police department as compared to the proposed Charter Change civilian oversight body. That is inaccurate. The Police Commission is in fact external to the Police Department, and reflects the perspective of the community, not the police.
 - c. Assigning responsibility for disciplinary input/decisions to the Police Commission would require a charter change in order to remove the Commission as the appeal body. In other municipalities, the city/town governing body makes decisions on discipline (usually, based on the recommendations of the police chief) and the appeal body is the judiciary, per rule 75. Burlington could shift to that model, whereby appeals would be heard by the judiciary, clearing the way for the Police Commission to be the oversight body on police misconduct and discipline.
2. **The proposed model of civilian oversight does not fit Burlington.** There are 3 broad types of civilian oversight models in the US: review, investigatory, and monitor.¹ The Charter Change Committee proposed an investigatory model, whereby the citizen oversight body hires a full-time paid professional staff to conduct investigations. However, this model has only been used in big cities which have large numbers of incidents to investigate, and where the civilian oversight body is comprised of trained professionals. The commissioners did not have the opportunity to discuss specific changes to this model in any detail at the December 3 meeting, but some suggestions and observations were made.
 - a. **The Charter Change Committee proposal would require a substantial duplication of efforts.** Given that the proposal says some complaints would be referred back to the Police Department for resolution, this implies the need for two investigative units—one internal to the police department and one assigned to the

¹ See City Attorney Blackwood's detailed memo to the Charter Change Committee (November 9, 2020) for an excellent and succinct description of the three models.

external civilian oversight board, were we to adopt the proposal investigatory model. This is a waste of resources for a small city with a limited number of cases to be reviewed each year.

- b. **We should choose a model that is built for a small community with a small number of complaints, similar to a review model.** Currently, Burlington Police Department receives about 28 actionable complaints a year and conducts 4-5 internal investigations. Repeated concerns about the mismatch of the scale of the proposed model to the needs of Burlington were expressed by various commissioners throughout the discussion.
 - c. As an example of a model for a city of a similar size as Burlington, **Farmington, NM proposed a model with a civilian oversight board, supported by a monitor** who reviews complaints, structures investigations, and sits in on interviews. An all-volunteer board with one paid person (the monitor) was proposed for this city. This model in some modified form may be a useful one for Burlington.
 - d. **We recommended that the National Association for Civilian Oversight of Law Enforcement (NACOLE) review any revised proposal for citizen oversight so that we may obtain the benefit of their knowledge and experience working with cities and towns all over the country to develop models tailored to our own community's needs. NACOLE is the premier institution in this country working to help implement civilian oversight bodies.² The Joint Committee passed a motion that this should be done before a charter change proposal goes to a vote in the March elections.** The vote of the Joint Committee on this recommendation was 6-2, with the only Nay vote from the Police Commission being in error and intended to be a Yea vote.
 - e. **The draft Charter Change Committee proposal** we reviewed was a version of the Madison, WI model. An important distinction between their civilian oversight board and the proposed model for Burlington is that the Madison board makes recommendations but does not make the final decision on discipline. Their board has the responsibility of hiring and firing a monitor, who is a skilled professional, independent of the police department. The proposed Charter Change Committee model instead has the civilian oversight board making disciplinary decisions in isolation from the police department and rendering a final decision on discipline with no consultation.
3. **As currently written, this proposal provides no role for the police chief.** City Attorney Blackwood indicated that this is one of the only models she has seen that completely excludes the police chief. That should be remedied in any revised proposal.
4. **The Collective Bargaining Agreement (CBA) between the city and police union conflicts with this proposed charter change.** Currently, per the Burlington police CBA, officers in Burlington are disciplined or removed by the Chief with a right to appeal to the Police Commission. This CBA has a Precedence clause in Article XX that says the

² City Attorney Blackwood's November 9 memo to the Charter Change Committee discusses NACOLE and its work in detail.

CBA trumps anything in conflict with it unless agreed to in writing. Article XXII states that the CBA remains in effect until and unless a successor CBA is agreed to (with the current contract expiring in 2022). The proposed charter change cannot simply override the CBA without significant legal headwinds. If it were passed, it would likely be litigated. But even before that, the legislature is unlikely to approve this, especially if police unions organize to block this with testimony in the legislature. While the city attorney indicated that a charter change trumps other laws, it would be important to know if a charter change can trump a union contract. There is a great deal of legal ambiguity on this. Regardless, the legislature is likely to be very cautious about undermining the police union by passing this.

5. **Restrictions on eligibility should be modified.** We all agree on the original intention of a civilian oversight body that does not have built-in favoritism toward the police. The VT ACLU had recommended that only current police officers or someone who had been a police officer within the last 10 years be ineligible to serve on a civilian oversight body. The ineligibility restriction could be extended to spouses of law enforcement officers. It was suggested that in lieu of restrictions, applicants disclose potential conflicts of interest for the selection committee to consider.
6. **Representation on oversight body.** Many on the Joint Committee felt the types of representation required for a civilian oversight body should be modified to be less rigid on categories of skills and experience needed, along with fewer nominating organizations and fewer representative numbers for certain members. General concerns were raised about how cumbersome this process is for selecting members—especially when done annually.
7. **Change language from civilian control to civilian oversight.**
8. **Review and input from the Police Commission.** We acknowledge the disappointment some members of the community may feel that commissioners are offering substantive input only at this late stage of the process. Members of the Police Commission would have welcomed a formal opportunity to weigh in earlier on the development of this proposal on a civilian oversight body. Several members of the Joint Committee believed that the Police Commission and/or Joint Committee should have had a greater opportunity to weigh in on the charter change before it had already been sent to the City Council for a vote.



Office of Mayor Miro Weinberger

MEMORANDUM

TO: City Council
FROM: Mayor Miro Weinberger
DATE: December 7, 2020
RE: Police Oversight Charter Change

At tonight's meeting, the Council will deliberate on a proposal to change our City Charter to include a new model of oversight for the Burlington Police Department. This is an important discussion that I welcome. I am committed to forging a new consensus on policing in Burlington that has support from both the community and the police department, and achieving that will require structural reforms to our oversight models and processes for administering officer discipline.

Background: Recent changes have been made to disciplinary process

Our Administration has taken recent actions related to disciplinary decisions. First, during Chief Morrison's tenure as Acting Chief she codified into policy the practice begun several years ago that the Chief shall consult with the Police Commission in advance of major disciplinary decisions. Second, this fall, I [issued an Executive Order](#) requiring the Chief of Police to formally present to the Mayor and other senior officials all disciplinary decisions for use of force incidents that result in injury to an individual or raise significant public concern before the Chief issues the decision.

The Administration supports changing charter to check sole disciplinary authority of Chief

These recent steps are not enough. Members of the public have made clear that they want to see greater accountability from its elected officials for police disciplinary decisions, and I agree. Elected officials and Police Commissioners, who are ultimately held accountable for police conduct, should have the opportunity to meaningfully weigh in when problematic police conduct occurs.

Further, as I have stated repeatedly over the last year, I find the near-absolute authority over discipline granted to the Chief by our Charter to be problematic and a departure from our typical practice of having democratic checks and balances. In order to address this issue we will need a Charter Change.

Charter Change proposed by Councilor Freeman lacks current consensus

While Councilor Freeman and I have disagreed on numerous policing issues, I respect her deep commitment to public safety policy and can see that she and her colleagues have worked very hard and diligently on her proposed new language.

Unfortunately, it is clear from discussions at the Charter Change Committee and the Joint Committee meeting last week, and from yesterday's letter that we received from the Police Commission that there remain significant concerns and unanswered questions about the current proposal. The Administration shares many of the concerns expressed by the Commission, and I believe some Councilors have concerns as well.

While perhaps Councilor Freeman's proposal could reach the votes in needs for Council passage, it clearly currently lacks the consensus that would benefit its chances of ultimate success if it were to go on the Town Meeting Day ballot, reach the State Legislature, and get to the desk of the Governor. If the Charter Change does not pass all of those tests, we will have set back the opportunity to make changes to the problematic status quo for a full year.

Administration alternative offered in interest of securing consensus by key deadline

I have called a Special Meeting of the City Council for Monday, December 14 to give us an additional week for the City Council to initiate the Charter Change process by warning a public hearing on specific Charter Change language (to be clear: I have taken this step because we know the Charter Change For Building Decarbonization needs an additional week of work, and a meeting on that date gives the police discipline charter change additional time as well). If this step does not happen at the December 14 meeting we will lose the opportunity to initiate the charter change process for another year.

In the interest of moving us towards a Charter Change on police discipline that could garner broad consensus, the Administration is offering the attached Charter Change language. Our proposal would give the Police Commission and the Mayor the ability to have input on disciplinary decisions, and gives the Commission significant additional investigatory powers beyond what they have today, as well as ultimate decision making authority in disciplinary cases there this is strong Commission disagreement with the Chief. The proposed changes would:

- Formalize that the Police Commission will receive and review all civilian complaints of alleged police misconduct, and formalizes a role for the Police Commission in the discipline of Police Officers by requiring the Police Chief to consult with the Commission in advance of administering discipline.
- Task the Police Commission to issue a quarterly report on complaints, discipline, and other activities.
- Gives the Mayor the authority to review and give input on investigation results or proposed discipline.
- Gives the Police Commission the authority to hire an independent investigator to conduct or review allegations into alleged serious misconduct.
- Gives the Police Commission the authority to hold a hearing, make findings, and issue a final decision if a supermajority of the Commission continues to disagree with the Chief's findings and recommended discipline.

I would welcome and fully engage in a focused process between Councilors, stakeholders, and the Administration over the next week to review this proposal alongside the Councilor Freeman's proposal in an attempt to find common ground by next Monday's deadline.

DRAFT CHARTER CHANGES FROM ADMINISTRATION

December 3, 2020

ARTICLE 62. POLICE DEPARTMENT

183 Board of police commissioners; composition; terms.

The board of police commissioners shall consist of seven (7) legal voters of said city, to be appointed by the city council with mayor presiding to serve for three (3) years and until their successors are appointed and qualified. The composition of the commission should represent the diversity of Burlington's residents, particularly including members of groups who historically have been marginalized.

(Act No. M-18, § 2, approved 3-1-16)

184 Same-powers and duties.

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

(b) The board of police commissioners shall receive and review all civilian complaints of alleged police misconduct, may review any other complaints against police officers that it deems in the public interest, and shall have a role in the discipline of officers as in section 189 of this Charter. The board shall have such other authority and responsibility relating to the management of the police department, its services and facilities, as may be delegated from time to time by resolution of the city council. Said board shall notify the mayor and the chief administrative officer, in writing, of any and all changes, modifications or additions to the rules and regulations of the department and shall issue quarterly reports on complaints, discipline, and other activities.

ARTICLE 63. CHIEF OF POLICE AND CAPTAIN

185 Officers of police force designated.

(a) The direction and control of the entire police force, except as herein otherwise provided, shall be vested in a police officer who shall be called the chief of police, and such other ranking police officers as the city council shall authorize, subject to the rules and regulations of the city council. The order of rank and succession within the police department shall be as designated by the city council by regulation.

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

ARTICLE 64. APPOINTMENT OF POLICE OFFICERS

186 Manner of filling vacancies.

Whenever a vacancy occurs in any other position, the chief may appoint a successor.

(Act No. M-14, § 4, approved 5-19-2004)

187 Force to be maintained; selection of members.

A regular police force for said city shall be maintained in the city. No applicant shall be deemed qualified for employment on said force until he or she has been approved by the chief of police. The process for determining the qualifications of and employing police officers shall fully comply with any criteria established by the board of police commissioners and the city's comprehensive personnel policy manual as the same may be amended from time to time.

(Act No. M-14, § 5, approved 5-19-2004)

188 Manner of appointment.

The chief shall, from time to time, as the needs of the city may require, appoint from the approved applicants. If the name of the applicant has been on the approved list for more than six months, the applicant shall take and pass a new examination by the board of medical examiners before being appointed.

(Act No. M-14, § 6, approved 5-19-2004)

189 Members of force to be retained as long as they remain competent.

The members of said regular police force now serving, or who shall hereafter be appointed thereto, shall, after the expiration of the one-year probationary period above provided, and so long as they shall remain competent, efficient and capable in the performance of their respective duties be retained as such, subject to the rules and regulations adopted under Section [184](#) of this Charter and provided that any member may be removed for cause as hereinafter provided.

ARTICLE 65. ~~REMOVAL OR SUSPENSION~~ DISCIPLINE OF POLICE OFFICERS

190 Chief may remove member for cause; hearing.

(a) 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 or the board of police commissioners 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 reduction in rank, ~~or~~ suspend the member without pay for a specified time period ~~in excess of 14 days,~~ or take other appropriate disciplinary action. 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 police chief.~~

(b) Before the chief takes any final action or closes any matter alleging that a police officer has been negligent or derelict in their duty or is guilty of any misconduct, the results of any investigation and any proposed response or discipline must be reviewed with the police commission, which may make recommendations to the chief. In addition, the mayor should have authority to review and give input on any investigation results or proposed response or discipline. In connection with any investigation of officer misconduct, the commission and the mayor should have access to all police department materials related to the investigation including tapes, transcripts, investigator's notes, witness statements, and other documents

(c) The board of police commissioners may hire an independent investigator to conduct or review any investigation into alleged serious misconduct, if by a majority vote it determines an independent investigation warranted. The results of that investigation would be shared with the chief who would provide the board with a proposed response, including any discipline of an officer.

(d) If after providing input to the chief on the department's proposed response in any allegation of serious misconduct and giving the chief a reasonable opportunity to amend the proposal, at least six members of the commission continue to disagree with the chief's proposal, the commission may hold a hearing, make findings, and issue a final decision, which will be considered a final agency action appealable to the Vermont Superior Court. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the 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 board of police commissioners shall have the power to subpoena witnesses and to administer the oath to such witnesses. The hearing will include, at minimum, a right for the accused officer to cross-examine and present witnesses and to be represented by counsel.

(be) Whenever it shall appear to the mayor that the chief has become incompetent, inefficient, or incapable from any cause, or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the mayor by a responsible person, the mayor may suspend the chief from duty, the city council shall forth with notify the chief of the charges preferred by them, or of the complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made, shall give the chief reasonable notice of the same, not less than 48 hours, and the city council shall have the power to subpoena witnesses and to administer the oath to such witnesses.

(ef) If, upon hearing, the city council shall find such complaints or charges to be well founded, it may dismiss the chief from the force, demote him or her in rank, or suspend him or her without pay for a period not to exceed 60 days. The procedures outlined in this section shall control in the event of any conflict with section [129](#) of this Charter as pertains to the removal of the chief.

(dg) 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.

(Act No. M-14, § 7, approved 5-19-2004)



Office of Mayor Miro Weinberger

MEMORANDUM

TO: City Council
FROM: Mayor Miro Weinberger
DATE: December 31, 2020
RE: Veto of Charter Change re: Independent Community Control Board and Call for Collaboration and Progress

Pursuant to Article 18 – Section 46 of the Burlington City Charter, which authorizes the mayor to veto any action of the City Council, I am returning the “Independent Community Control Board To Oversee Investigation And Discipline Of Police Misconduct Charter Change” (“Charter Change”) passed at the Council’s December 14 meeting to you unsigned and providing you my written objections to it below.

I send you this communication while still desiring to find a route to come together and unite behind a proposal that will forge new consensus on this critical policing issue and represent meaningful racial justice for our BIPOC communities. As I detail below, I remain ready to meet with City Council President Max Tracy and other councilors to try to find common ground that would allow me to rescind this veto before you take final action on this matter Monday night.

If we cannot find consensus now and my veto is sustained, we must find other ways to make near term progress on the issue of police discipline and reforms that protect and build trust with the public, especially BIPOC communities. Therefore, this letter also includes a plan for implementing improvements to the police discipline system immediately, and bringing a Charter Change for the beginning of the 2022 session should my veto stand after Monday night.

Objections to the December 14 Charter Change Proposal

My overriding objection to the proposed charter change is that as written it will contribute to the dismantling of the Burlington Police Department and compromise the City’s ability to ensure public safety.

In the short-term, placing the Charter Change on the ballot is likely to accelerate the departures of sworn officers from the department. The department is already down 20% from its maximum staffing levels, perhaps the largest reductions of officers of any department in the country since the national protests of last summer. Putting the current divisive and controversial Charter Change on the ballot will give further fuel to this trend, and likely hasten the day in which the City will need to stop staffing an overnight shift and cut back on other basic public safety services that residents expect.

Over the medium and long-term, the proposed Charter Change, if adopted, will have even greater impacts on the City’s ability to field an effective police department. The current proposal will cause concerns for prospective police officers and department leaders, because the board appears designed to be hostile to police officers. An Oversight Board should be required to adjudicate discipline fairly and impartially, or hew to defined standards. Further, the removal of the

Chief of Police from having a role in all serious disciplinary decisions is unique within all the models we have reviewed, and its impacts on the operations of the department are unknown and a cause of deep concern.

A further serious problem of the Charter Change proposal is that it is so detailed that serious errors and unintended problems are likely, and they will be very difficult to react to or fix. As this Charter Change proposal was being developed, the City Attorney and City Councilors recommended that the authors draft critical, broad authorizing language, and leave important details to be set through ordinances in future City Council action. Instead, in a significant break from best practice, the Councilors who led this effort have included large amounts of detailed, new, untested language. As a result, if passed, errors and unintended problems arising out of that new language will be baked into the Charter, making them inherently challenging to respond to and address. Future evolutions and improvements of the new system that the City desires to make are also likely to require charter changes. This structured rigidity is likely to create festering problems and serious challenges for public safety in the years to come.

Finally, while I would not veto the proposal over this issue alone, it is also problematic that the proposal does nothing to increase the ability of the mayor to formally weigh in on major disciplinary matters, despite the concerns about this that I raised repeatedly for a year. After months of demonstrations, it is very clear that the public holds the mayor accountable for police disciplinary decisions. To meet this public expectation, the charter should allow some formal role for the mayor in the adjudication of these matters.

Offer to meet and withdraw this veto if common ground is found

I veto the Charter Change with great reluctance, because I agree that the current charter is problematic and there is urgency to amend it. I believe I was the first Burlington elected official to bring attention and concern, a year ago, to the near-absolute power of the Chief to impose discipline under our current system. Such monopoly of important authority is an aberration in our democratic system, it has contributed significantly to community distrust, and we are likely to face continued disputes over future disciplinary actions until this issue is addressed.

Further, it is clear that the Council and Administration agree on many key issues related to police discipline. As stated in my alternative December 7 charter change proposal, I support granting a community board the ability to conduct independent investigations into complaints, subpoena sensitive department information, and overrule the Chief when necessary on disciplinary decisions. While I believe we could achieve the reforms we need through our existing Police Commission system, I am willing to accept and support the Council's proposed framework of creating a new, independent board if my other concerns are met.

Given that we agree on many key issues, it is unfortunate that the Councilors leading this charter change have made no effort to work out our remaining differences and denied our requests to meet and discuss changes before passage of the Charter Change on December 14. I remain willing to meet and to work in good faith to find common ground before Monday's meeting. I made this willingness clear to President Max Tracy in a phone message earlier today and hope he will accept this invitation for collaboration.

An alternative plan that can progress immediately

If this final effort to find a consensus charter change now fails and the Council sustains my veto, the problems in our police discipline system will remain, and we must keep working on this issue with purpose and urgency. In such an event, I am committed to taking the following steps to implement

immediate improvements to our current system and continue momentum towards future structural changes:

- I will work with the City Council to bring forward a resolution soon that immediately delegates new disciplinary authority to the Police Commission, including the authority to conduct independent investigations. We do not need a charter change to delegate this authority to the citizen oversight board that exists today.
- I will also work with the City Council to bring forward soon a current year budget amendment granting the Police Commission a budget for conducting such independent investigations.
- Ultimately, we will still need a charter change on police discipline. As soon as possible, the Council and the Administration should appoint a new Special Committee of Councilors and Administration representatives that continues to work to find common ground on this issue. This committee should be tasked with hearing from both racial justice advocates and police officers who will serve under a new system, and returning with a consensus proposal by mid-2021.
- To ensure that this consensus proposal can be put to the voters and delivered to the legislature for the start of the 2022 session, I propose that we commit to a Special Election next fall (such a Special Election will also likely be necessary for TIF project bonding authority and perhaps other infrastructure bonding as well).
- One of the major short-comings of the Council's current charter change proposal is that it is unclear what standards the new board would attempt to hold officers accountable to. I propose that the Council and Administration act in January to address that short-coming by requesting that the Police Commission review the current departmental discipline standards and recommend new standards in advance of a Special Election next fall.
- While getting police discipline right is critical, we must expand our focus if we truly seek to secure different policing outcomes. I have requested that our Director of Police Transformation Kyle Dodson complete a review of our officer training and evaluation systems and issue recommendations to me and the City Council before the end of his six-month tenure. Further, Director Dodson has been exploring the creation of a process to forge reconciliation between the Burlington police and the BIPOC community, and I have asked him to conclude that work and issue recommendations before his tenure ends.



CITIZEN COMPLAINTS FLOW CHART

COMPLAINT RECEIVED;
INFORM COMMISSION

[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](#).