



Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.

When: Aug 2, 2023 05:30 PM Eastern Time (US and Canada)
Topic: Joint Committee on Police Oversight Meeting

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1. Adopt the Draft Agenda

Subject	1.1. Adopt the Draft Agenda
Meeting	August 2, 2023 - Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.
Category	1. Adopt the Draft Agenda
Department	Council and Board
Type	
Recommended Action	

2. Adopt the Draft Minutes from July 6, 2023

Subject	2.1. Adopt the Draft Minutes from July 6, 2023
Meeting	August 2, 2023 - Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.
Category	2. Adopt the Draft Minutes from July 6, 2023
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Public Forum
Meeting	August 2, 2023 - Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.
Category	3. Public Forum
Department	Council and Board
Type	
Recommended Action	

4. Update from the Police Commission and Discussion

Subject	4.1. Update from the Police Commission and Discussion
Meeting	August 2, 2023 - Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.
Category	4. Update from the Police Commission and Discussion
Department	Council and Board
Type	
Recommended Action	

5. Discussion of Councilor Questions

Subject	5.1. Discussion of Councilor Questions
Meeting	August 2, 2023 - Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.
Category	5. Discussion of Councilor Questions
Department	Council and Board

Type

Recommended Action

6. Any Other Committee Business

Subject	6.1. Any Other Committee Business
Meeting	August 2, 2023 - Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.
Category	6. Any Other Committee Business
Department	Board of Health
Type	
Recommended Action	

7. Adjournment

Subject	7.1. Adjournment
Meeting	August 2, 2023 - Ordinance and Charter Change Joint Committee on Police Oversight Meeting Agenda - Wednesday, August 2, 2023, 5:30 PM, Fletcher Room in the Fletcher Free Library, 235 College St.
Category	7. Adjournment
Department	Board of Health
Type	
Recommended Action	

ORDINANCE and CHARTER CHANGE JOINT COMMITTEE

Thursday, July 6, 2023

Bushor Conference Room and Remote via Zoom

DRAFT MINUTES

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

Staff Present: Kim Sturtevant (Acting City Attorney), Jordan Redell (Mayor's Chief of Staff)

Others in Attendance: Councilor Grant, Mary Cox (Police Commissioner), Shakuntala Rao (Police Commissioner) Jake Schumann, Samantha, Mike Hoey, Amy Malinowski,

Meeting called to order at 5:40 PM.

1.0 Agenda

Motion to adopt/amend agenda

Motion to Adopt Agenda as is.

Motion by Councilor Carpenter, Seconded by Councilor Doherty

Final Resolution: Motion Passes

Yes: Unanimous

2.0 Adopt the Draft Minutes from May 30, 2023

Motion to Adopt Minutes as is.

Motion by Councilor Bergman, Seconded by Councilor Carpenter

Final Resolution: Motion Passes

Yes: Unanimous

3.0 Public Forum

Amy Malinowski: I am looking forward to reading the draft language coming from this committee.

4.0 Update from the Police Commission and Discussion

Commissioner Cox: The Police Commission is intending to vote on a memo to send to this Committee. This document was written by Commissioner Seguino.

Melo Grant: The document contains feedback from previous commissioners and has been worked on for some time.

Shannon: Did the Commission vote on the report that this Committee already received?

Melo Grant: There was a lot of discussion amongst the commissioners in creating the document, but there has been a lot of change and turnover recently.

Traverse: We have a number of documents available online that speak to that work. It sounds like this next memo will be a summation of all that work.

Bergman: I have put together a preliminary set of questions that I intended to share with Councilor Traverse. I took many of Councilor Hightower's questions and examined them with the documents we have available to the Committee. One of my preliminary questions is: Do we as a Committee focus on one or both types of oversight? One type is investigatory/disciplinary and the other is auditing/monitoring. It makes a big difference if we are trying to address both types.

Carpenter: We still have to develop the body or mechanism that will conduct the investigatory side. In addition, we should discuss the larger trends and operations rather than the individual incidences. There are some impediments to these questions, such as the Chief's authority in the charter. The most discussion has been around the investigatory aspect.

Bergman: That raises the other question: Where do you want to vest these powers? A single public body could have the power to do both of these aspects. Depending on the structure, I think a single body could do it, but that could be extensive work and there could be some conflicts of interest.

Shannon: I do not have a predetermined preference on this. I know previous City Attorney Blackwood did a lot of work on this a few years ago and we should look back on that and update it. We must also include the police department in this discussion. Officers aren't going to be coming to these meetings, but we should be sharing information with the Chief and the head of the police union.

Traverse: We have included them in our warned meeting list and as of yet there hasn't been any police union input. I do think we should find alternative methods to include their input.

Melo Grant: We need to remember that we are trying to keep residents safe. Unfortunately, in some sections of our community there is limited trust in the police and it has to be earned. Officers already have some protections built into the collective bargaining agreement with the police union. We must balance supporting our officers with protecting our residents.

Hightower: I am afraid we are rehashing the same discussions we have already had. We need to start getting pen to paper.

Carpenter: In 2020, we went at this issue thinking that the Police Commission would have the responsibility in the reforms. I believe the discipline issue has been the most contentious and needs the most work. This Committee can only address ordinances or charter issues, and we can't deal with the relationship aspects now.

Commissioner Cox: We have looked at systems in other cities that are much bigger than Burlington and I would like to see any reports that compare us to similarly-sized cities.

Bergman: NACOLE suggests that cities should examine what is best for themselves and best fit for the issues in the area. Is this investigatory body a primary finder of facts or is it an appeals body? We need to get police union folks, ballot proposition folks, and others to decide on these decision points.

Hightower: Part of the reason why I wanted to hear from HR Director Durfee is that I think we could have the HR Committee be the appeals body instead of the Police Commission. That would free up the Police Commission to do other work without conflict.

Traverse: There are three parts of the complaint process: the investigation, the discipline, and the appeal. We need to decide on who or which body is going to address each of these parts. Currently,

the discipline is handled entirely by the Chief. There is also the question of if an appeal should first go to the HR Committee.

Bergman: Yes, and there are other aspects that inform those parts, such as access to information. There is also the question whether the body should only be addressing citizen or internal complaints. Should they be addressing all use of force or discharge or a firearm? There are also questions on qualifications for members of the body, on staffing, on independence and powers.

Mary Cox: I am wondering if anyone has spoken with the state Department of Public Safety?

Carpenter: No, we have no spoken with them. There is a state oversight body and we should reach out to them.

Melo Grant: There is a lot of talk about discipline, but I feel that is not the main focus of the work of the Commission. We saw only maybe two appeals. The bulk of the work relies on documents that come directly from the department.

Traverse: I think it would make sense to follow the process laid out in the investigation process.

Carpenter: Looking at the memo from Commissioner Seguino, many of the issues are not ordinance or charter issues. Things like the lack of resources or viewing officer training are not really in our purview and should probably be separated out.

Bergman: I respectfully disagree. All of those things could be framed in ordinance.

Carpenter: Let me rephrase that. Are these issues, such as lack of resources for data analysis, something that should be done in ordinance or something that Councilors should advocate for in the budget?

Doherty: I think starting with the complaint flowchart makes a lot of sense to begin with. First, the issue of discipline rests only with the Chief and we need to address if we want to change that. The Chief also has an investigatory role and we may want to change that as well.

Traverse: Even before those two steps, we have the question of how the initial complaint is addressed. The Police Commission receives a copy of the complaint immediately and it sounds like that is working.

Commissioner Rao: We do review the use-of-force videos as well as the complaints. We have a good system of dividing up the videos between the Commissioners then they can bring concerns forward if there are any.

Commissioner Cox: Yes, our system of video review has worked well. I will say, we also see some good conduct and organization in these videos. We have also seen videos of great conduct by members of the public.

Carpenter: It's great that it is working. But that process is through an Executive Order and we should codify that in ordinance so it is more permanent.

Commissioner Rao: BPD does the investigation and fact-finding and we review after that. We do not have the capacity or time to investigate ourselves. We have agreed with the findings of the department in some instances and disagreed in others. We ultimately cannot investigate and fact-

find like the department does. We do have some options to do research or engage with researchers or other professionals.

Commissioner Cox: I will add that some complaints come in from individuals that are clearly in some kind of mental health situation. I think rather than just label the complaint as unfounded, we really should be doing more to have the department collaborate and provide supports for those people even if the complaint is not founded.

Doherty: What would having another separate body, an investigatory body, look like? Would it be professional City employees that can properly investigate? Or would the department still do the investigation, but under the eye of an outside body?

Jordan Redell: The Mayor's Office supports having the Police Commission be able to hire an outside investigator to investigate if they feel there is serious misconduct. Most investigations would still be handled by the department, but the Commission would have that extra power if they chose to use it.

Bergman: That is great. All of this discussion is pre-due process. The hearing and appeals process will occur after and we need to think through that. The current system keeps both investigations and discipline within the department, but we would be altering how that would work. I support changing the current system, but we do need to think through the whole process.

Hightower: I don't think this is going to be a new department for investigations given the small number of complaints that have discrepancies between the department and the complainant. I would suggest having an investigator on retainer for the Commission so they have them when they need it. I don't know how specific our language has to be.

Commissioner Rao: We do request 911 recordings and body-worn camera footage, so we do some investigations. I would like more information on what the Mayor is thinking on hiring an investigator for the Commission.

Jordan Redell: I can send the language that the Mayor is proposing. In short, he suggests that the Commission can hire or retain an investigator by an affirmative vote and have the work product reviewed by the City Attorney's Office.

5.0 Discussion of Next Steps

The Joint Committee will meet Thursday, July 13.

6.0 Adjournment

Motion to Adjourn.

Motion by Councilor Bergman, Seconded by Councilor Carpenter.

Final Resolution: Motion Passes

Yes: Unanimous

The meeting was adjourned at 7:51 PM.

A. Investigative/Review Function

1. [DD40](#), Section 1, Subsections B, C, D, F, and G describes the process by how allegations of violations of Department Rules or Regulations are initiated from within or outside of the Department.

Does the Committee wish to make any changes to how internal or community complaints are initiated?

2. [DD40](#), Section 1, Subsections A and E vests the authority to investigate all internal and community complaints regarding Department personnel with the Chief who determines whether an investigation is necessary or not. The [2021 Mayoral Executive Directive](#), requires that all use of force incidents that result in injury be reported to the Police Commission after investigation, but only after the Chief confers with the Mayor and receives the Mayor's approval with any recommendation from the Chief.

The overarching question is: Does the Committee wish to make any changes to this authority and process?

The following specific questions are raised by this broader question:

Should internal complaints be treated differently than community complaints?

Should conduct other than just use of force incidents that result in injury be reported to an oversight body (e.g., dishonesty, discrimination, harassment, criminal conduct, or other serious misconduct)?

Should reports to an oversight body only be reported after the Mayor has reviewed the Chief's recommendation?

Should an oversight body have a role in deciding who investigates internal or community complaints?

Are there distinctions based on the severity of the allegation ("categorization") that would change who is the investigator and decisionmaker on the disposition of the complaint?

Article XV of the [BPOA collective bargaining agreement](#) defines the continuum of lower-, mid-, and higher-level infractions. Should there be a modified process for categorizing complaints (e.g., should the process be authorized by charter?, etc.) and, if so, how does that intersect with collective bargaining rights?

Who decides on the categorization of the allegation?

Is the categorization reviewable?

3. If the Committee believes an oversight body should have a role in deciding who investigates internal or community complaints, who other than the Chief and their designee should conduct the investigation?

The following options are raised by this question: the oversight body itself, an independent investigator selected by the oversight body for a particular investigation, an independent monitor selected by the oversight body to conduct all investigations, etc..

4. For an explanation of the current investigatory framework, see [DD40](#), Section 3.

The broader question is: Should the current investigatory framework be changed?

More specific questions are:

Should this framework apply equally to all complaints?

What authority should an oversight body other than the Department have in the course of their investigation (e.g., right to review documents, subpoena testimony, review any Department investigation, make recommendations, etc.)?

5. If the Committee believes the Chief should retain some or all authority to investigate internal or community complaints, what role should the oversight body have during that investigation process?

More specific questions that arise from this broader question are:

Must the Department inform an oversight body upon the filing of a complaint and, if so, when must this notification take place?

Is the Department required to provide regular updates during the investigation?

Must the Department report back to an oversight body at the conclusion of all investigations?

Must the Chief's recommendation be approved by anyone—the Mayor, the Commission, an oversight body—prior to the decision being finalized?

6. [DD40](#), Section 2, outlines rights and obligations of employees during an investigation process, cross-referencing due process considerations in the [BPOA collective bargaining agreement](#).

Does the Committee wish to explore any changes to these due process considerations and, if the Committee supports different processes to investigate complaints, should the same due process considerations apply to each process?

7. If the Chief retains some or all authority (and responsibility) to investigate internal or community complaints, what occurs after the Chief issues their conclusions on how a complaint should be disposed?

Does an oversight body have any role if the Chief retains the authority and responsibility to conduct the investigation and make recommendations on the disposition of the complaint (e.g., review the investigation and make recommendations, etc.)?

If an oversight body makes recommendations on the disposition of the complaint and the recommendation is not followed, does the decider have to explain why the recommendation was not followed?

8. If an oversight body obtains authority to investigate internal or community complaints, what is the process going forward after it reaches its conclusions on how the complaint should be disposed (e.g., what rights do parties (accused, complainant, Department have upon receipt of the conclusions of the investigation)?

Should the complainant have any rights to appeal if they disagree with the final disposition?

What due process protections should be incorporated?

Should there be any changes to the requirements of the [BPOA collective bargaining agreement](#)?

Should anybody else (e.g., other community members) who is aggrieved by a decision have the right to appeal or to raise objections?

9. If an oversight body has authority to review an investigation of an internal or community complaint and a recommendation is made, what is the process going forward?

Should the complainant have any rights to appeal if they disagree with the recommendation?

What due process protections should be incorporated?

Should there be any changes to the requirements of the [BPOA collective bargaining agreement](#)?

Should anybody else (e.g., other community members) who is aggrieved by a decision have the right to appeal or to raise objections?

10. Should there be a process by which disagreements over the recommended action are resolved and by what authority is the process codified (e.g., charter change by which entity other than the Chief is resolving disputes)? What changes if a complaint is about the Chief?

B. Auditing.

1. What role, if any, should the oversight body have as an auditor. Sub-issues to consider:

What is the scope of matters subject to auditing (public safety trends, reviewing and creating new policies, adherence to policies and procedures, internal investigatory processes, analysis of aggregate data on discipline and other police practices).

What events should trigger an audit, e.g., periodic reviews or other events.

What is the scope of investigative authority as auditor, access to data, analytics, policies, procedures, and reports.

What degree of community involvement should an audit involve, including recommendations and feedback?

2. Deconflicting procedures regarding auditing/monitoring function: What procedures should be in place to make sure oversight body's operations work harmoniously with ongoing internal affairs investigations, criminal investigations, prosecutions, etc.
3. Transparency for public accountability and need for confidentiality in certain circumstances. When should data or other information be kept confidential, for how long, and under what circumstances.

C. Composition, selection, and resources.

What should be the oversight body's composition, selection and resources (e.g., staffing).