



Joint Committee on Police Oversight Meeting Agenda - Tuesday, October 3, 2023, 7:00 PM, REMOTELY via ZOOM

When: Oct 3, 2023 07:00 PM Eastern Time (US and Canada)
Topic: Joint Committee on Police Oversight Meeting

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1. Agenda

Subject

1.1. Motion to amend/adopt agenda

Meeting

October 3, 2023 - Joint Committee on Police Oversight Meeting Agenda - Tuesday, October 3, 2023, 7:00 PM, REMOTELY via ZOOM

Category

1. Agenda

Department

Type

Recommended Action

2. Adopt Draft Minutes

Subject **2.1. Adopt Draft Minutes**
Meeting October 3, 2023 - Joint Committee on Police Oversight Meeting Agenda - Tuesday, October 3, 2023, 7:00 PM, REMOTELY via ZOOM
Category 2. Adopt Draft Minutes
Department Council and Board
Type
Recommended Action

3. Public Forum

Subject **3.1. Verbal Comments**
Meeting October 3, 2023 - Joint Committee on Police Oversight Meeting Agenda - Tuesday, October 3, 2023, 7:00 PM, REMOTELY via ZOOM
Category 3. Public Forum
Department Council and Board
Type

4. Councilor Discussion and Review of Vital Questions

Subject **4.1. Councilor Discussion and Review of Vital Questions**
Meeting October 3, 2023 - Joint Committee on Police Oversight Meeting Agenda - Tuesday, October 3, 2023, 7:00 PM, REMOTELY via ZOOM
Category 4. Councilor Discussion and Review of Vital Questions
Department Council and Board
Type
Recommended Action

5. Adjournment

Subject **5.1. Motion to adjourn**
Meeting October 3, 2023 - Joint Committee on Police Oversight Meeting Agenda - Tuesday, October 3, 2023, 7:00 PM, REMOTELY via ZOOM
Category 5. Adjournment
Department Council and Board
Type
Recommended Action

ORDINANCE and CHARTER CHANGE JOINT COMMITTEE

Monday, September 25, 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 Hightower, Councilor Doherty, Councilor Shannon

Staff Present: Kim Sturtevant (Assistant City Attorney), Josh Diamond (Outside Counsel)

Others in Attendance: Melo Grant (City Councilor), Shakuntala Rao (Police Commission), Mary Cox (Police Commission), Jake Schumann, FaRied Munarsyah, Laurie Spitzer

Meeting called to order at 7:13 PM.

1.0 Agenda

Motion to adopt/amend agenda

Motion to Adopt the Draft Agenda.

Motion by Councilor Bergman, Seconded by Councilor Shannon

Final Resolution: Motion Passes

Yes: Unanimous

2.0 Adopt the Draft Minutes from September 7

Motion to Adopt Minutes as is.

Motion by Councilor Bergman, Seconded by Councilor Shannon

Final Resolution: Motion Passes

Yes: Unanimous

3.0 Public Forum

Shakuntala Rao (Police Commission): At the August meeting of the Commission, we had four resolutions and two were tabled and two were passed. We are updating the Commission's policy on body worn camera review and we sent a letter that stated our position. The second recommendation was to have a separate body hear officer appeals on discipline. Currently, the Commission does not have the time to devote to properly hearing and considering these appeals. The Commission also recommends the creation of a budget for the Commission and the hiring of a monitor. We meet next on September 26.

Mary Cox (Police Commission): We are still waiting on labor relations decisions related to the appeal body issue. Also, a subcommittee of the Commission is working on an amended draft on recommendations, but the work is still in its infancy.

Melo Grant (City Councilor): Looking at the September 7 minutes, it is concerning that Chief Murad and the Mayor have walked back that they support the Commission having access to all

use-of-force incident records. I hope that the police union rethinks their position on this and does not stop the Commission from having access to all incident body worn camera footage.

Jake Schumann: I think it is important that the charter be changed on that issue since then the BPOA cannot negotiate on it.

Public comment closed at 7:30PM

4.0 Councilor Discussion and Review of Vital Questions

Councilors submitted written opinions that are available on the CivicClerk agenda.

Councilor Traverse said that it is great that the Commission is still working on their recommendations, but that it means we are losing time going toward Town Meeting Day. Councilors Bergman, Carpenter, and Hightower have all submitted pathways or recommendations, however.

Councilor Carpenter reiterated that she believes there should still only be one oversight body and that the powers stay with the Police Commission. The Commission could be expanded to nine members to lessen work load. The Commission also needs some kind of staff support and there should be a formal job description for the monitor position.

Councilor Hightower added that complaints about police conduct that are not use-of-force related or a crime should have follow up with the complainant so there is some closure for the complainant. Having this done through the Community Justice Center could be a helpful forum.

Councilor Carpenter posited that the Human Resource Committee could be a good forum for an appeal from an officer on a disciplinary matter. Currently, the charter still only gives authority to the Chief so something might have to change.

Shakuntala Rao (Police Commission) said that the Commission could send out letters or follow up with complainants as well.

Councilor Bergman believes the proposal from councilors Carpenter and Hightower involves a lot of policy and ordinance changes and should be a secondary concern for the Joint Committee. Charter changes have to be ready by December for the election in March and the Committee should focus on that. Councilor Bergman reiterated that he wants two separate oversight bodies.

FaRied Munarsyah: There is an appeal process for police officers for disciplinary matters, but there is no appeal process for complainants to the department. I think the City Council should have ultimate appeal authority for discipline similarly to the Fire Department.

Councilor Bergman said that the Council is inherently political and should not be the appeal body. He added that the current powers of the Commission should be codified instead of just being policy. There should be a charter change that gives the Commission the right to monitor and audit data, records, and footage.

Councilor Traverse brought up some legal questions regarding charter changes. There is general consensus that Police Commission powers and authority should be written into the charter rather than being delegated by Council resolution as it currently stands. There is consensus that the Commission should have authority to review incidents without any obstruction and that it should

be in charter. He also thinks there should be clarity, in charter, on how the Commission can review directives and police policy.

Councilor Shannon brought up that the Council can pass ordinances rather than resolutions to codify the Commission's current role and questioned whether all the changes should be in charter. Councilor Shannon wants to limit the number of charter changes so that things are more flexible.

Councilor Doherty reiterated Councilor Traverses's request to counsel to put together language on a potential charter change or ordinance change. Councilor Doherty also asked that the Chief of Police and the BPOA should be involved in the discussions once the Committee has something in writing.

5.0 Adjournment

Motion to adjourn.

Motion by Councilor Traverse, without objection.

Yes: Unanimous

The next Joint Committee meeting is scheduled for 10/3 at 7:00PM by Zoom.

The meeting was adjourned at 9:23 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).

Gene Bergman's preferred pathways

A Charter Change on Discipline/Investigation, including the authorization for the adoption of ordinances to effectuate them.

1. Powers

A. For high level Infractions

1. The creation of a new independent community body (different from the commission) to decide cases involving higher level infraction, as those are defined in the BPOA contract and as designated and referred by the commission (see B1a below), and to impose discipline
2. The body is appointed by the city council after soliciting input from the range of community organizations interested in public safety, criminal justice, equity, etc.. The body should also represent the diversity of the City's population, particularly those populations that have been most marginalized
3. There is a budget for an independent counsel and other needed staff and compensation on par with other community commissions and boards
4. Cases are investigated and discipline is proposed by the BPD Chief or their designees
5. The current due process system is maintained
6. The obligation to report dispositions to the commission as part of its monitoring and auditing responsibility

B. For middle and low level infractions

1. The codification of the current system in which the Police Commission is involved in the community complaint process, with changes. See Resolution of 10/18/21 (p 5 line 67-87); Seguíno 5/30/23 memo.
 - a. The right to review all complaints of police abuse and designate the level of seriousness. This includes use of force incidents. The right to create policy to detail this right. Resolution of 10/18/21, p 5 line 67-68; Seguíno memo p 2,3)
 - b. The right to request an investigation into an incident and receive a report from chief, review incidents, receive unfettered access to information, conduct an independent investigation using its own hired investigator, give input and make recommendations, require chief to publish their objections and reasons if the PC recommendation is not followed, The right to create policy to detail this right. (10/18/21 Res lines 69-87; Seguíno memo page 2)
 - c. The right to publish anonymized complaint reports and create policy to detail this right. (Seguíno memo page 2)
 - d. The creation of the process whereby a subcommittee would be involved in the complaint review and recommendation process and a separate subcommittee would act as a grievance body pursuant to current charter. (PC memo of 4/22/22 page 12 lines 428-429)
 - e. A budget for an independent counsel and other needed staff and compensation on par with other community commissions and boards
2. The express authorization for the city council to adopt ordinances effectuating the above powers and then the drafting of ordinances to put this into effect.

Audit/Monitoring

A Charter Change on Audit/Monitoring, including the authorization for the adoption of ordinances to effectuate them, that codifies in charter the role of the PC to review all community complaints and engage in the auditing and monitoring of the department.

The rights of the PC to be authorized by charter include the right to monitor and audit the department and all its personnel, the right to an independent monitor, the right to unfettered access to data and analysis, the right to adopt directives and policies and make recommendations on practices, the right to other resources such as legal and other staff, the right to report and discuss monitoring and auditing conclusions in public

The following is needed in ordinance to put this power into effect:

1. The creation of an independent monitor position along the lines proposed in the memo by then-PC co-chair Seguino on May 30, 2023 and supported by the commission at its August meeting
2. The codification of the role of the REIB office to access, analyze, and report to the PC and CC on data related to use of force and other interactions that implicate equity issues including mental health, drug and alcohol, homelessness, etc. as well as equity issues involving safety perceptions, response times, and disparities related to geographic communities (this comes out of discussions I and Councilor Melo had with Dir. Carson--she was supportive of and helped craft it; Seguino memo p 4 is not directly on this point but supportive of)
3. Codify the right of the PC to unfettered access to data, investigations, use of force reports and other information needed to allow the PC to carry out its auditing and monitoring mandate.
4. Codify the PC process for adopting directives & other policies. (See PC 4/22/22 memo pages 4-5; Seguino memo p 3)
5. Codify and resource the PC's oversight of training. (Seguino memo page 3)
6. Codify the right to discuss anonymized complaints in public as part of the monitoring and auditing process (Seguino memo p 2).
7. Codify the obligation for post-incident reviews and analyses to be submitted to the PC (Seguino memo p. 2-3)
8. Codify the right to monitor and audit investigations of complaints
9. Codify the right to audit the department and make recommendations (Seguino memo p 4) on department policies and practices, such as de-escalation practices and racial disparities in policing.
10. Codify the right to monitor and audit the non-sworn staff of the PD (Seguino memo p 4).

Sarah Carpenter and Zoraya Hightower – thoughts on Police Oversight

One body

- Expand the body to 9 and tighten up nomination?
 - can we have criteria?
 - disclose relationship to police, if applicable
 - Two people per district if it's 9? One per district if its 7?
- Can we set up formal sub-committees?
 - Disciplinary
 - Directives
 - One more? What makes sense?

Staff Support

- Assume at least 50% of the time to police commission alone.
- Mandate not reporting to police chief or fire chief.
- Other options for where they sit (don't have to formalize, but recommend to mayor?)
 - Legal department: more of a paralegal admin person to support research, etc.
 - Public Safety Department: CARES, staff police commission and fire board, and public safety commission, houselessness, addiction
 - Human Resources: more complaint process specific person for both BPD and across the city.

Discipline

- All complaints, use-of-force incidences should be accessible to an oversight body a week before the next meeting of that body or within 1 week, whichever is later. Individual-staff level outcomes data disaggregated by race and disability should be sent to the oversight body annually. The oversight body as a committee or as a sub-committee will review and categorize all complaints and use-of-force by type of complaint (language, use-of-force, etc.) and by severity (low, medium, high as defined in the BPOA contract) as well as the level of discrimination found in outcomes data.
- All complaints will receive an update on each milestone of the process as well as the overall outcome of their complaints. Either the chief or the committee can refer the matter to the CJC for restorative justice.
 - Example: 1) the police chief and sub-committee have until X date to come to a decision 2) they have come to a decision and agreed on the severity and discipline, and this has been issued OR 3) they have come to a decision and disagreed on the severity and discipline, this is now being sent to the HR Director
- (FOR NOW, future process in Charter Change Below) The Chief will issue discipline or launch an investigation after this recommendation has been made. The Chief will inform the Body on any deviations in actions from their recommendation. The Body may also launch a parallel investigation by decision of a simple majority.

- Annually, the committee will release a report with high-level data of both the categorization of complaints by type and complaint by severity as well as use-of-force by type and use-of-force in severity and detail how often their recommendation and that of the chief deviated.

Appeals

- Go to HR committee (like the rest of city staff)

Charter Change

1. **Discipline.** For complaints that are labeled as serious or high or use-of-force with an injury, or for data indicating bias for more than one year for any staff member, the body will make a recommendation – be that investigatory or disciplinary. The body may also choose to develop a recommendation around any complaint or use-of-force or data-based outcomes that they believe requires further action - be that investigatory or disciplinary.

In parallel, the Chief will categorize and make a recommendation of discipline or investigations. If the categorizations or the two recommendations cannot be reconciled – the matter goes to the HR Director. If they can be reconciled, the categories are recorded, and recommendations implemented.

Annually, the committee will release a report with high-level data of both the categorization of complaints by type and complaint by severity as well as use-of-force by type and use-of-force in severity and detail in how often their recommendation and that of the chief deviated.

2. *Appeals go to the HR committee like the rest of the city staff.*
3. *Implement the same process as above for the fire department (requires Charter Change)*



Traverse	
Receipt of complaints	<p>Charter (from August 2020 Complaint Policy)</p> <ul style="list-style-type: none"> • Add to Section 184 or 190 language regarding the right to submit either external or internal complaints to either BPD or the Police Commission <p>Ordinance (from August 2020 Complaint Policy)</p> <ul style="list-style-type: none"> • BPD, in collaboration with the Burlington Police Commission, will develop and make publicly available a Community Complaint form. • All complaints, whether generated externally or internally, are referred to as Community Complaints. • 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 Community Complaint Form. • All Community Complaints are documented on a spreadsheet maintained by the Deputy Chief of Administration, or designee.
Recordkeeping	<p>Ordinance (from August 2020 Complaint Policy, adding that categorized level of the offense should be included in complaint record, and adding recordkeeping for use-of-force incidents)</p> <ul style="list-style-type: none"> • The Deputy Chief of Administration, or their designee, will maintain a written record of each complaint and use-of-force incident. That written record will at a minimum include: <ul style="list-style-type: none"> - The name(s) of the employee(s) involved. - The date of receipt of the allegation or use-of-force incident. - The date of the alleged incident, if known. - The type or nature of the allegation or use-of-force incident. - The name(s) of the person(s) who investigated, if any. - The final disposition of each complaint or use-of-force incident, including the categorized level of the complaint or use-of-force incident, if any (lower-, mid-, or higher-level). - How the matter was closed out with the complainant. • In addition, if the matter involves use of force, or an allegation of dishonesty or other serious misconduct, including, but not limited to, all complaints categorized as higher-level, the written record will include:

	<ul style="list-style-type: none"> - All action taken in response to the complaint or use-of-force incident. - Identification of all witnesses, documents, evidence, or other information obtained or consulted in the course of the investigation.
<p>Initial review of complaints</p>	<p>Charter (existing charter language)</p> <ul style="list-style-type: none"> • Keep language in Section 190 about Chief’s role to initially investigate complaints. <p>Ordinance (from August 2020 Complaint Policy, adding use-of-force incidents)</p> <ul style="list-style-type: none"> • When a use-of-force incident occurs or 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. • Lower-level and some mid-level complaints that are able to be resolved quickly and at first level of supervision, remain as Community Complaints. • Some mid-level complaints or certain use-of-force incidents 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. • Higher-level complaints or use-of-force incidents will either be an Administrative Review or will be escalated to a Bureau of Internal Affairs investigation. • The Chief of Police, in consultation with the States Attorney’s Office, will make the determination of if a complaint or use-of-force incident needs to be referred outside the Department for investigation of possible criminal conduct. • 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.
<p>Initial categorization of complaints</p>	<p>Ordinance (from August 2020 Complaint Policy, adding use of force incidents)</p> <ul style="list-style-type: none"> • Complaints and use-of-force incidents will be categorized by BPD as lower-level, mid-level, or higher-level consistent with the Burlington Police Officers’ Association Contract, Article XV, section 15.2.
<p>Reporting of Complaints to Police Commission</p>	<p>Charter (from August 2020 Complaint Policy, adding all use of force incidents, not just those that result in injury)</p>

	<ul style="list-style-type: none"> • Add to Section 184 or 190 language that the Police Commission shall receive notification of and updates on the status of any community complaints and investigation of use-of-force incidents. <p>Ordinance (from August 2020 Complaint Policy, adding all use-of-force incidents, not just those that result in injury, and removing any delay in reporting to the Police Commission on use-of-force incidents, as is set forth in current directive and policy)</p> <ul style="list-style-type: none"> • The Chief will report to the Police Commission on all use-of-force incidents and complaints against members of the department as follows: <ul style="list-style-type: none"> - Updates about complaints against employees and any use-of-force incidents will be shared with the Commission at the first meeting following receipt of the complaint or the occurrence of the use-of-force incident, unless the matter is of such urgency that a special meeting is required. - Updates regarding use-of-force incidents or any complaint involving allegations of unlawful discrimination shall include demographic data about the officer(s) and subject(s) such as gender, age, and race. 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 at the first meeting after the investigation has been completed. - For lower- and mid-level matters, the Chief will provide a verbal or written summary of the complaints and their status or disposition. - For higher-level matters, 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 matters 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. - Legal Note: Current policy requires that the above information be provided to the Police Commission in Executive Session. I have removed that reference here but would appreciate legal guidance on the extent to which it needs to be added back in, given the confidentiality of personnel matters.
<p>Police Commission Access to Information</p>	<p>Charter (from August 2020 Complaint Policy, adding use-of-force incidents)</p> <ul style="list-style-type: none"> • Add to Section 184 or 190 language affirming the Police Commission’s right to access information regarding community complaints and use-of-force incidents, including, but not limited to, any written materials, any audio or video footage, evidence, or other information related to the matter. <p>Ordinance (from August 2020 Complaint Policy, adding use-of-force incidents)</p> <ul style="list-style-type: none"> • The Police Commission shall have access to the written records of all use-of-force incidents and complaints, including, but not limited to, any audio or video footage, written materials, evidence, or other information related to the matter, subject to the Vermont Public Records Act, and the Burlington Police Officers’ Association agreement.

	<ul style="list-style-type: none"> • If the matter has been referred outside of the Department for investigation of possible criminal conduct, the materials will be made available to the Police Commission once a determination has been made that the materials may be disclosed to the Police Commission without adversely affecting any possible prosecution. • Legal Note: Add any other confidentiality requirements, but only to the most limited extent necessary to maintain legally required confidentiality.
<p>Police Commission Rights After Receipt of Investigation Report</p>	<p>Charter (from August 2020 Complaint Policy, adding right to conduct independent investigation)</p> <ul style="list-style-type: none"> • Add to Section 184 or 190 language that Police Commission may either accept the Chief’s recommended action, or request reconsideration and/or make their own recommendation, and with a majority vote conduct a separate investigation by an independent monitor or counsel. <p>Ordinance (from August 2020 Complaint Policy, adding right to conduct independent investigation)</p> <ul style="list-style-type: none"> • Within 14 days after receipt of the investigation report on any complaint or use-of-force incident, the Police Commission may: <ul style="list-style-type: none"> - accept the Chief’s report and recommended action; or - request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, categorized level, disposition (including recommending a range of sanctions for the misconduct), or other aspect of the matter • Prior to making any request for reconsideration or making a recommendation different than the Chief’s recommended action, the Police Commission may, by a majority vote, conduct a separate investigation through an independent monitor or counsel who will have access to the same information as the Chief in conducting their investigation, including, but not limited to, the right to take witness statements, written materials, audio or video footage, evidence, or other information related to the matter. • If no action is taken within 14 days, the Chief’s recommendation shall be considered final. • Legal Note: I agree we need language regarding a complainant’s ability to remain updated on the status of their complaint, and at least to be informed of the complaint’s disposition. I’d appreciate guidance on where to best incorporate this without running afoul of confidentiality requirements.
<p>Next Steps After Any Request for Reconsideration or</p>	<p>Charter (from August 2020 Complaint Policy, adding that Chief’s explanation must be in writing)</p>

<p>Recommendation from the Police Commission</p>	<ul style="list-style-type: none"> • Add to Section 184 or 190 that the Chief may accept or reject the Police Commission’s recommendations. If the Chief rejects the Police Commission’s recommendations, the Chief shall provide written explanation to the Police Commission why the recommendations were not accepted. <p>Ordinance (from August 2020 Complaint Policy, adding that Chief’s explanation must be in writing)</p> <ul style="list-style-type: none"> • The Chief may accept or reject the Police Commission’s recommendations. • If the Chief rejects the Police Commission’s recommendations, the Chief shall provide written explanation 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. • Legal Note: As in other areas, I understand the personnel disclosures required under this section may require confidentiality requirements, but I would like a legal opinion on how to be as transparent as possible, including, but not limited to, whether any confidentiality concerns could be mitigated by anonymized reports.
<p>Appeal Rights re: Disciplinary Matters</p>	<p>Charter</p> <ul style="list-style-type: none"> • Remove from Section 190 the Police Commission’s current role as appellate body over disciplinary matters. • Add language on new body to hear disciplinary appeals, preference being City Council or a subdivision of the Council (e.g., HR Committee) • Legal Note: I believe a separate body is necessary because of the Police Commission’s expanded role in reviewing complaints. • Legal Note: Awaiting answer on whether BPOA CBA can add third step of arbitration after whatever appellate process is established by our Charter. • Legal Note: I don’t think we should address this now but, looking forward, I suggest the Charter Change Committee review whether we should mirror whatever process we come up with here for the Fire Department, as I believe the charter language applicable to the Fire Department is outdated from current practice.
<p>Police Commission Rights on Auditing and Monitoring Departmental Policies</p>	<p>Charter (reflecting what I understand to be current practice, adding a path to resolve disputes through City Council)</p> <ul style="list-style-type: none"> • Add to Section 184 language that:

	<ul style="list-style-type: none"> - any changes, modifications or additions to the rules and regulations of the department must be adopted by the Police Commission; - that the Police Commission may initiate their own recommendations on the same; and - that where the Police Commission fails to adopt a proposal from the Department, or the Department refuses a recommendation from the Police Commission, the matter may be referred by either party to the City Council.
<p>Police Commission Oversight of Chief</p>	<p>Charter (from August 2020 Complaint Policy)</p> <ul style="list-style-type: none"> • In addition to what already exists in Article 36 of the Charter, add to Section 190(b): 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 shall report this to the Mayor in a timely manner. • Legal Note: Existing August 2020 policy provides a path for the Police Commission to report alleged misconduct to the VCJTC. I'd like confirmation on whether this is permitted under 20 VSA 2401 and, given the uncertainty that was caused by the most recent report to the VCJTC, I believe we should have a discussion on whether this is the appropriate path.
<p>Reporting to City Council</p>	<p>Ordinance (from August 2020 Complaint Policy, adding use-of-force incidents)</p> <ul style="list-style-type: none"> • The Police Commission shall report to the Burlington City Council at least annually and the report shall include, but not be limited to, a redacted summary of the number, type, and disposition of complaints and use-of-force incidents reported to the Police Commission. • Legal Note: I cannot track down the exact language, but I believe other boards and commissions are statutorily required to report to the City Council (e.g. Board of Health, Housing Board, Parks Commission, etc.). For the sake of consistency, make sure the language applied to Police Commission is consistent with other boards and commissions, with exception of clearly adding that the Police Commission's report should include information on complaints and use-of-force incidents.

<p>Traverse</p> <p>I. Complaints</p> <p>Intake via Community Complaint form.</p> <p>Deputy Chief of Adm. tracks complaints and record keeping of essential information. This includes identification of witnesses, documents, evidence, and other information obtained or consulted with during an investigation of use of force incident (UoF) and any response taken.</p> <p>Complaints categorized by BPD as lower, mid, and higher level consistent with CBA.</p> <p>II. Investigations.</p> <p>A. BPD.</p> <p>Lower level and some mid level complaints resolved quickly with first level of supervision.</p>	<p>Hightower/Carpenter</p> <p>I. Complaints</p> <p>Oversight body receives all complaints a week before regularly scheduled meeting.</p> <p>Oversight body shall categorize complaints by severity (low, medium, high per CBA), UoF, discrimination.</p> <p>BPD shall annually report individual-staff level outcomes, data to be disaggregated by race and disability.</p> <p>II. Investigations</p> <p>A BPD.</p> <p>Chief will provide updates on each milestone in the investigative process to the oversight committee.</p>	<p>Bergman</p> <p>I. Complaints</p> <p>All complaints should be reported to the Police Commission (PC).</p> <p>PC body shall have ability to independently designate level of seriousness of complaint.</p> <p>II. Investigations</p> <p>A. BPD.</p> <p>Lower level and some mid level complaints resolved quickly with first level of supervision.</p>
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<p>Mid level, high level, and use of force escalated for Administrative Review (AR). AR determines whether IA investigation occurs. Referrals to SA or VCJC as needed.</p> <p>Reports of all complaints against members of the department sent to Police Commission (PC).</p> <p>Lower and mid level matters will be reported to PC via oral or written summary, status, and disposition. Recommendations of dispositions involving more than a written reprimand will be shared with the PC in advance of issuance.</p> <p>Regular updates provided on status of investigations involving high level matters, UoF, or unlawful discrimination. This includes key demographic information about the officers and subjects involved, reports, and video evidence. Recommendations for dispositions of such matters will be shared with PC before they are issued.</p>	<p>Chief will have the authority to refer resolution matter to restorative justice program, such as CJC.</p> <p>Chief will have authority to launch investigations after decision to refer matter to CJC has been made.</p>	<p>Mid level, high level, and use of force escalated for Administrative Review (AR). AR determines if IA investigation occurs. Referrals to SA or VCJC as needed.</p> <p>Reports of all complaints against members of the BPD sent to PC.</p> <p>Lower and mid level matters will be reported to oversight entity via oral or written summary, status, and disposition. Recommendations of dispositions involving more than a written reprimand will be shared with the PC in advance of issuance.</p> <p>Regular updates provided on status of investigations involving high level matters, UoF, or unlawful discrimination. This includes key demographic information about the officers and subjects involved, reports, and video evidence. Recommendations for dispositions of such matters will be shared with PC entity before they are issued.</p>
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Commented [JD1]: Is there an obligation to maintain confidentiality during executive session.

<p>B. Oversight Entity.</p> <p>Shall have access to all evidence obtained from the investigation of a UoF incidents and their underlying complaints.</p> <p>By majority vote, after receiving Chief recommendation, may initiate independent investigation upon any complaint involving UoF, unlawful discrimination, or high level offense.</p> <p>Investigation to be performed by independent monitor or counsel. Authority includes ability to interview witnesses, obtain documents, and other evidence.</p>	<p>B. Oversight Entity.</p> <p>Shall have the authority to refer matters for resolution through restorative justice program, e.g., CJC.</p> <p>Shall have the authority to launch a parallel, independent investigation based upon majority vote.</p>	<p>B. Oversight Entity.</p> <p>Shall have access to all evidence related to an investigation of a complaint.</p> <p>Shall have authority to conduct an independent investigation for high level matters.</p> <p>Shall have the authority to hire its own investigator.</p> <p>Shall have the authority to publish anonymized complaint reports.</p> <p>Subcommittee of oversight entity would review complaints, oversee investigations, and make recommendations.</p>
<p>III. Disposition/Discipline.</p> <p>Within 14 days of Chief's recommendation, PC shall accept recommendation, request reconsideration, seek an independent investigation by majority vote, or make an</p>	<p>III. Disposition/Discipline.</p> <p>Chief will make a recommendation to oversight body for all high level, UoF involving injury, and matters involving bias.</p>	<p>III. Disposition/Discipline.</p> <p>After Chief's recommendation, oversight entity shall accept recommendation, request reconsideration, or make an alternative recommendation for disposition.</p>

Commented [JD2]: This may require review of possible issues involving CBA and Public Records Act. In addition, access to evidence may be limited if referral is made to State's Attorney for criminal charges and public disclosure would adversely impact successful prosecution and/or access to a fair trial.

Commented [JD3]: JRD Question: Should format be similar to OPR, where there is a panel with a professional investigator, PC member, and counsel?

Commented [JD4]: JRD Question: subpoena authority?

<p>alternative recommendation for disposition.</p> <p>If no action is taken by the PC within 14 days after receiving the BPD's recommendation, the Chief's recommendation shall be considered final.</p> <p>A. Conflict with Recommendations.</p> <p>Chief may accept or reject PC recommendation. If Chief rejects, written explanation provided for rejection. If majority of PC disagrees after explanation, PC shall report disagreement to Mayor.</p>	<p>Oversight body may make a recommendation for all high level, UoF involving injury, and matters involving bias.</p> <p>A. Conflict with Recommendations.</p> <p>If a conflict arises between the recommendations of the oversight body and Chief, HR Director shall reconcile.</p>	<p>If the Chief does not follow recommendation for alternative disposition, they shall publish their objections and reasons.</p> <p>A. Conflict with Recommendations.</p> <p>Oversight body shall have the authority, in cases involving higher level infractions or police abuse, to impose discipline in conflict with the Chief.</p>
<p>B. Communication with Complainant.</p> <p>Communications with complainant informing them of the disposition or other status.</p>	<p>B. Communication with Complainant.</p> <p>Communication with complainant informing them of the disposition or other status.</p>	<p>B. Communication with Complainant.</p> <p>Oversight body shall have authority to publish findings, recommendations, and dispositions.</p>

Commented [JD5]: JRD Question, who is the final arbiter of the disagreement?

Commented [JD6]: Issues of investigative confidentiality should be addressed.

<p>PC may report performance concerns regarding the Chief to the Mayor.</p> <p>Annual report to City Council regarding summary of the number, type, and disposition of complaints, UoF incidents reported to the commission.</p> <p>V. Civilian Oversight Entity.</p> <p>Entity shall have professional staff including an oversight monitor.</p>	<p>V. Civilian Oversight Entity</p> <p>One body, up to 9 members, including one or two per district.</p> <p>Subcommittees including directives, discipline, and _____.</p> <p>Professional staff, at least .5 FTE, should be housed within City Attorneys Office, HR, but not BPD.</p>	<p>PC shall have ability to review BPD training.</p> <p>PC shall report auditing and monitoring activities to the public. This includes ability to publish anonymized complaints.</p> <p>REIB shall also have access to oversight body's data and analysis to report on UoF and other interactions that implicate equity issues.</p> <p>V. Civilian Oversight Entity.</p> <p>Membership appointed by the City Council after soliciting input from a range of community organizations. The body should represent the diverse nature of the City's constituents including those from historically marginalized communities.</p> <p>Professional staff including a monitor to assist with auditing functions, independent counsel.</p>
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		Budget appropriations commensurate with responsibilities, staff, and other community commissions and boards.
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