

1 **BURLINGTON POLICE DEPARTMENT'S**
2 **FAIR AND IMPARTIAL POLICING POLICY**
3
4

5 **PURPOSE**
6

7 The purpose of this policy is to reaffirm the Burlington Police Department's commitment to
8 conduct policing in a fair and impartial manner, to clarify the circumstances in which officers
9 can consider personal characteristics when making law enforcement decisions, and to
10 reinforce processes and procedures that enable us to provide services and enforce laws in
11 an equitable and impartial way. Officers will act first and foremost in the best interests of
12 our community and our mission when dealing with undocumented foreign nationals who
13 come to the Department for help or to make reports, giving full priority to public safety and
14 justice concerns.
15

16 **POLICY**
17

- 18 a. Employees are prohibited from engaging in biased policing. This means no
19 member of the Burlington Police Department shall take actions based on any
20 person's personal characteristics, except as described below, in the services
21 our employees provide to the community in connection with our law
22 enforcement activities. To achieve this objective the Department will
23 implement a combination of best practices including but not limited to: hiring,
24 in-service training, policy development, supervision, reporting and
25 investigative processes, appropriate discipline, and community
26 outreach/partnerships.
27
- 28 b. It is essential to the mission of the Department that victims report crimes and
29 fully cooperate in investigations, that witnesses come forward and provide
30 testimonial evidence, that persons report suspicious activity and other
31 information to reduce crime and disorder, and that help is summoned when
32 needed. These activities must be undertaken without hesitation and without
33 fear that the victim, witness, or reporting person will be subject to prosecution
34 or deportation for no reason other than immigration status. *Because of this and*
35 *because federal law does not require law enforcement agencies to ask about the*
36 *immigration status of crime victims/witnesses, it is the policy of the Burlington Police*
37 *Department that Burlington officers will not routinely ask any person about their*
38 *immigration status.*
39
- 40 c. `Citizenship, immigration status, national origin, race, and ethnicity should
41 have no bearing on an individual's treatment in the Department's custody or
42 interactions with the public. Immigration status or perceived immigration
43 status, including the existence of an immigration detainer, shall not affect the
44 detainee's ability to participate in pre-charge or police-initiated pre-court
45 processes. Furthermore, immigration status or perceived immigration status
46 shall not be used as a criteria for citation, arrest, or continued custody to
47 determine an individual's ties to a community pursuant to Rule 3 of the
48 Vermont Rules of Criminal Procedure.

d. Local law enforcement are not required to enforce federal civil immigration laws.
Therefore, it is the policy of the Burlington Police Department that its police officers
shall not enforce civil immigration laws.

CONTENT

I. Definitions

“Biased policing” is conduct by law enforcement officers motivated by an individual’s actual or perceived or self-identified personal characteristics.

“Personal characteristics” include actual or perceived race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion and socio-economic status.

“Immigration status” refers to an individual’s lawful or unlawful presence in this country.

“Reasonable suspicion” means suspicion for which an officer can articulate factual reasons, but that does not need to rise to the level of probable cause.

“Probable cause” means facts or circumstances that would lead a reasonable person to believe that a crime has been committed, is being committed, or is about to occur.

“Member” or “employee” means any employee of the Burlington Police Department, regardless of their assigned tasks or duties.

“Potential bias incident” means any interaction or situation that may involve personal characteristics being used as the reason for a person’s action.

II. Policing Impartially

A. As required by law, all enforcement actions by Burlington police officers, such as investigation, detentions, traffic stops, arrests, searches and seizures, must be based on reasonable suspicion, probable cause or other required legal standards.

B. Officers are expected to be able to articulate specific facts, circumstances, and conclusions which support the required standard for a given enforcement action.
Except as provided below, officers shall not consider the personal characteristics of a person in establishing reasonable suspicion or probable cause, initiating encounters that are not legal detentions, requesting consent to search, or deciding to exercise an official action.

C. Officers may take into account reported race, ethnicity or other personal characteristics of persons as part of determining a person’s identity if the officer receives information the officer considers credible, reliable, and locally relevant that links a person of specific description to the matter requiring police response.

D. As required to comply with Title VI of the 1964 Civil Rights Act, officers are expected to utilize professional interpreter services either in person or

telephonically when necessary to speak with a person with limited English proficiency.

- E. Officers generally should not ask federal authorities to provide interpretation services, unless a clear emergency requires it and licensed interpretation services are not available through any other means. Unless one of the exceptions included in Section VIII applies, an officer shall not ask about the immigration status of the person for whom interpretation is required.

III. Community Relations

To cultivate and foster transparency and trust, each ~~[agency member]~~ officer shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with the public:

- A. Be courteous and professional;
- B. Introduce themselves to the person (providing name and agency affiliation), and state the reason for the stop as soon as practical unless providing this information will compromise officer or public safety;
- C. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense and that the person understands the purpose of reasonable delays;
- D. Provide the officer's name *and badge number* verbally when requested. Officers may also provide the information in writing or on a business card;

In addition to the above, officers should answer relevant questions the person may have if doing so will not compromise safety and/or the investigation.

IV. Responding to Bias-Based Reports or Reports Regarding Bias from the Community

- A. If any Department employee receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the employee will attempt to ascertain if there are other circumstances or facts that would constitute reasonable suspicion or probable cause. If the complainant can offer no further information, the complainant's contact information will be obtained, and the complainant will be advised that the Officer in Charge of the shift will be in contact.
- B. The employee will contact the OIC and explain the circumstances of the call. The OIC should attempt to familiarize the caller with the Department's Fair and Impartial Policing policy and explain that the Department responds to actions that appear to be crimes and not to situations that are based solely on someone's personal characteristics. If the caller is concerned about the person's perceived immigration status, the caller should be referred to federal authorities.
- C. At the conclusion of the call, the OIC will ensure that the contact is documented using the Department's incident report system.
- D. If an employee receives a report of a potential bias incident, the Department shall either dispatch an officer to evaluate the complaint or refer the caller to the officer in charge.

V. Due Process and Immigration Enforcement

- 144 A. Building trust between police and all residents is vital to the public safety mission
145 of the Department. Policing in a fair and impartial manner is essential to building
146 such trust. Therefore, officers shall not use an individual's personal
147 characteristics as a reason to ask about, or investigate, a person's immigration
148 status. Officers may inquire about immigration status only when it is necessary to
149 the ongoing investigation of a criminal offense.
- 150 B. Burlington Police officers are not charged with enforcing and will not enforce civil
151 immigration laws, where the only violation of law is presence in the United States
152 without authorization or documentation. This includes not initiating or prolonging
153 stops based on civil immigration matters, such as suspicion of undocumented
154 status. Similarly, officers shall not knowingly facilitate the detention of
155 undocumented individuals or individuals suspected of being undocumented by
156 federal immigration authorities solely for suspected civil immigration violations.
- 157 C. Because local police officers are not required to enforce "administrative warrants,"
158 "immigration detainers," and "requests for notification" issued by Immigration and
159 Customs Enforcement (ICE), officers will not detain individuals based on any of these
160 documents alone or comply with requests for notification, subject to subsection D below.
- 161 D. *This policy is not intended to prohibit or restrict any Department employee from sending
162 to or receiving from any federal immigration official information regarding the citizenship
163 or immigration status of any individual.*
- 164

165 VI. Training and Compliance

- 166 A. The Department will ensure that, at a minimum, all members and employees are
167 compliant with Council and legislative requirements regarding fair and impartial
168 policing training.
- 169 B. Additional trainings may include instruction on anti-bias, power and privilege,
170 non-English speaking communities, undocumented communities, and
171 victim/witness services.
- 172

173

174 VII. Accountability and Supervision

- 175 A. Accountability is a vital element of policing. Police agencies are better able to
176 achieve the goals of protecting the public safety, enhancing the quality of
177 neighborhood life, and serving community needs if the communities they serve
178 trust them. The means for making a complaint about biased policing shall be
179 readily available to the public.
- 180 B. Where appropriate, employees are required to intervene at the time they become
181 aware that a biased policing incident is occurring. Employees will be alert and
182 respond to indications of potential biased policing.
- 183 C. All members of this agency are required to promptly report allegations,
184 complaints or knowledge of biased policing or suspected violations of this policy
185 to their supervisor.
- 186 D. Shift supervisors will accept any complaint from the public regarding any
187 provision of this policy and shall follow the agency's procedure for handling
188 citizen's complaints.
- 189 E. The Department shall ensure that all employees are familiar and in compliance
190 with the content of this policy.
- 191

VIII. Additional Guidance Regarding Due Process and Immigration Enforcement

A. VICTIM AND WITNESS INTERACTION

The following guidelines are based on best practices and offer guidance on how to best support crime victims/witnesses and to ensure procedural justice and enhance trust between the police and community.

1. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, officers will not ask about, or investigate, immigration status of crime victims/witnesses unless the victim/witness is also a crime suspect and immigration status is necessary to the criminal investigation.
2. Officers will coordinate the availability of victim services to documented and undocumented victims/witnesses and victims of crimes. Officers should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses and that officers do not ask victims/witnesses about their immigration status.
3. Officers shall not report or communicate information about victims/witnesses to federal immigration authorities, except for information regarding the citizenship or immigration status of an individual, unless they have a signed, written consent by the victim/witness.

B. IMMIGRATION STATUS:

1. An officer's suspicion about any person's civil immigration status shall not be used as a basis to initiate contact, detain, or arrest that person. The exception to this would be in those instances where the agency member is working with Federal partners in the Stone Garden program or similar Federal initiatives.
2. Officers may not inquire about a person's civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense.
3. Officers shall not make warrantless arrests or detain individuals on suspicion of "unlawful entry," unless the suspect is apprehended in the process of entering the United States without inspection.

C. ESTABLISHING IDENTITY:

1. Notwithstanding other provisions of this policy, officers may make attempts to identify any person they detain, arrest, or who come into the custody of the Department.
2. An individual should not be stopped or detained solely for the purpose of establishing his or her identity. Officers may utilize general federal databases in attempts to establish an individual's identity but should not involve federal immigration officials in such an inquiry unless necessary. If federal immigration officials are involved, communication should be limited to what is needed to establish the individual's identity or to communicate regarding citizenship or immigration status.

239 **3. Acceptable forms of identification, which must include a photograph of the**
240 **individual, may include, driver's licenses from a U.S. state or foreign country,**
241 **government-issued IDs by a U.S. jurisdiction, foreign passports, and consular**
242 **ID cards.**

243
244 **D. CIVIL IMMIGRATION WARRANTS:**

245 Officers shall not knowingly arrest any individual based on a civil immigration warrant,
246 including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the
247 National Crime Information Center Database (NCIC).
248

249 **E. COLLABORATION WITH FEDERAL IMMIGRATION OFFICERS:**

- 250 **1.** Officers shall not contact CBP or ICE for assistance solely on the basis of a
251 suspect's or arrestee's race, ethnicity, or national origin, although they may
252 communicate regarding an individual's citizenship or immigration status.
253 **2.** Officers shall not prolong any detention solely in order to investigate
254 immigration status or to allow CBP or ICE to investigate immigration status.
255 **3.** Sweeps intended solely to locate and detain undocumented immigrants shall
256 not be conducted unless acting in partnership with a Federal agency as part of
257 a formal partnership.
258

259 **F. USE OF RESOURCES:**

260 Officers shall not hold for or transfer people to federal immigration agents unless the
261 federal agents provide a judicial warrant for arrest. A civil immigration detainer (Form I-
262 247, I-247D, I-247N, or I-247X) is not a warrant and is not reviewed by a judge and
263 therefore is not a lawful basis to arrest or detain anyone. Valid criminal warrants of
264 arrest, regardless of crime, shall not be confused with immigration detainers. This policy
265 does not affect the proper handling of arrests and detentions associated with criminal
266 arrest warrants.
267

Police Commission Special Forums

The Burlington Police Commission will host three special forums in the coming months to seek public input on the city's draft Fair and Impartial Policing Policy. The state model policy and the draft city policy are available on the Commission's website: <https://www.burlingtonvt.gov/Police/Commission/Agendas>, as supporting documents under the January 24th meeting.

Friday, February 17th at Migrant Justice, 294 North Winooski Ave, Suite 130, 6 PM [Christine and Sarah can attend]

March 13th or 14th, date to be determined – Andrew is confirming with Black Lives Matter and NAACP to see if we can join one of their meetings. If not, Sarah will check with Sustainability Academy to see if we can hold a meeting there. [Andrew and Sarah can attend]

March 22nd, place to be determined – Andrew is checking with Champlain College to see about a space. [who will attend?]

Questions we'd love attendees to comment on:

- Should the city adopt the state's model policy?
- Should the city draft our own version? Either one to comply with federal law, or one that goes further than the model policy?
- What's missing from the model policy that you would like to see in a Fair and Impartial Policing Policy in Burlington?

Organizations to reach out to:

Justice for All

NAACP

Black Lives Matter Vermont

Migrant Justice

ACLU

CcaleoVt

Pride Center

Outright Vermont

Peace and Justice Center

Surge

Association of Africans Living in Vermont

Vermont Refugee Resettlement Program

Somali-Bantu Community Association

Spectrum

BOARD OF POLICE COMMISSIONERS
MINUTES OF MEETING
Tuesday, January 24, 2017
Approved

A meeting of the Board of Police Commissioners was held in the Burlington Police Department Community Room on **Tuesday, January 24, 2017**. Chair Kenney called the meeting to order at 6:05 PM. Chief del Pozo arrived at 6:07 PM.

The following Commissioners were present: Chair Sarah Kenney, Co-Chair Christine Kemp Longmore, Commissioner Robert Simpson, Commissioner Andrew Plumley and Commissioner Jim Dunn. Commissioner Shireen Hart joined via phone conference. Also present: Police Chief Brandon del Pozo, Deputy Chief Jannine Wright and Brion Houston, Police Commission Clerk.

Additions or Modifications to Agenda:

~ Chair Kenney moved to combine items #5 and #7 into just #5. Commissioner Plumley second. All Commissioners in favor; motion passed. #6 would become another Public Forum. #7 would be Chief's Report.

Public Forum:

~ Mark Hughes (via phone conference) from Justice For All thanked Chief del Pozo and Eric Fowler, BPD Crime Analyst, for their work on the Use of Force data.
~ Ebony Nyoni from Black Lives Matter Vermont made comments that the policy lacks proper training for Officers dealing with Black people.

Update on Research into Civilian Oversight of Police Departments – Sara Giannoni:

~ Sara Giannoni, City Councilor, updated the Commission with hopes of bringing a resolution to the February 6th meeting of the council. Sara stated that the current role of the Police Commission is very unclear and part of the research will help bring clarity.

Consent Agenda – Minutes

~ Chair Kenney mentioned to move the Consent Agenda item before the Use of Force data presentation due to some technical difficulties with the projector. With the agreement of City Attorney Eileen Blackwood, there was no issue with doing so.
~ Commissioner Simpson motioned to move the consent agenda and previous minutes. Commissioner Plumley seconded the motion. All Commissioners in favor of the motion; motion passed.

Use of Force Data Presentation – Eric Fowler:

~ Eric Fowler, the Police Department's Crime Analyst, and Chief del Pozo presented the soon to be released data report. Eric stated the Use of Force data report will be available online tomorrow.
~ Eric answered questions asked by both Commissioners and the public in attendance.

Update on Sanctuary City and Fair and Impartial Policing Policy – City Attorney and Assistant City Attorney:

~ Chair Kenney introduced City Attorney Eileen Blackwood and Assistant City Attorney Justin St. James to the Commission. Eileen discussed the language of the Sanctuary City and Fair and Impartial Policing

Policy draft to include the modifications made.

~ Chief del Pozo answered questions asked by the Commissioners, the public, and more specifically members of Justice For All, Migrant Justice, and Black Lives Matter Vermont.

~ Commissioner Hart disconnected from the conference call at 8:12 PM.

~ Chair Kenney was interested in further conversations at different locations where appropriate in the city. It was mentioned that not everyone feels safe going to the Police Department for meetings. Commissioners asked members of the public in attendance for advice on locations where meetings could be held to solicit public input on the Fair and Impartial Policing Policy.

~ The Commission picked three dates to hold further conversation: February 17th, which Migrant Justice volunteered to host, March 13 or 14th, and March 22nd. Locations are to be determined.

~ Commissioners decided that 3 or fewer Commissioners would attend each of the meetings. Meetings will be advertised as broadly as possible and Commissioners will take notes.

Review of Any Incoming Correspondence:

~ No review of any incoming correspondences during this meeting.

Commissioners' Updates/Comments:

~ No updates or comments from the Commissioners during this meeting.

Review Updated Directives:

~ No review during this meeting.

Next Meeting's Agenda Items and Date:

~ Chair Kenney stated the next meeting is February 28th, 2017.

~ Chair Kenney stated there will be three smaller meetings held throughout the city.

~ Chair Kenney requested to keep Fair and Impartial Policing and Sanctuary City policies on the next agenda for an update.

~ Co-Chair Kemp Longmore requested an update on resolution from Civilian Oversight of the Police Department – Sara Giannoni.

Chief's Report:

~ Chief del Pozo stated that he has met with every applicant of color that has failed the Entrance Exam that was taken in Pittsford at the Police Academy. Chief mentioned he and Eric Fowler have gone over study strategies to better prepare applicants for the exam and have more successful outcomes.

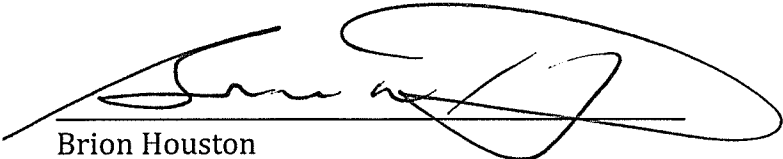
Executive Session:

~ No executive session was needed during this meeting.

Adjournment:

~ Chair Kenney motioned for adjournment. Commissioner Plumley seconded the motion moving to adjournment at 9:59 PM.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Brion Houston', is written over a horizontal line.

Brion Houston
Executive Assistant to the Chief of Police
Clerk of Police Commission

03/03/2017

Date