

# ORDINANCE and CHARTER CHANGE JOINT COMMITTEE

Monday, November 13, 2023

Remote via Zoom

## DRAFT MINUTES

**Members Present:** Councilor Traverse (Ordinance Committee Chair), Councilor Carpenter, Councilor Doherty, Councilor Shannon

**Staff Present:** Kimberlee Sturtevant (Assistant City Attorney), Jordan Redell (Mayor's Chief of Staff), Josh Diamond (Outside Counsel), Jon Murad (Burlington Chief of Police)

**Others in Attendance:** Romeo Von Hermann, Melo Grant, Sharon Bushor, Evan

Meeting called to order at 5:39 PM.

### 1.0 Agenda

#### Motion to adopt/amend agenda

*Motion to Adopt the Draft Agenda.*

*Motion by Councilor Carpenter, Seconded by Councilor Shannon*

*Final Resolution: Motion Passes*

*Yes: Unanimous*

### 2.0 Adopt the Draft Minutes from November 1

*Motion to Adopt Minutes as is.*

*Motion by Councilor Shannon, Seconded by Councilor Doherty*

*Final Resolution: Motion Passes*

*Yes: Unanimous*

### 3.0 Public Forum

Sharon Bushor: I sent a communication to both of the co-chairs. I think the Committee has made good progress on a charter change. I felt there the statement about a possible discrepancy between the Chief and the Commission was too vague. The language suggested the appeal process would be on a case-by-case basis and I think the Committee should look back at this and add more specificity. When I was on the HR Committee there was an established process with guidelines for appeals. I know the Commission is concerned about taking on more responsibility given the time required. I hope the Commission has agreed that they can take on any new responsibility. We don't want to have a situation where people feel burdened or don't want to serve.

### 4.0 Councilor Discussion and Review of Vital Questions

*Outside Counsel Josh Diamond shared the working document from November 1. Discussion began with section 184(d).*

Councilor Traverse clarified that the current draft charter language would allow the Chief to either finish an investigation into a complaint or relay to the Commission that the complaint was not

going to be investigated. After that, the Commission would decide if they wanted to do their own investigation.

*Motion to change the draft charter language of 184(d) to be:*

*“The board of police commissioners shall have the authority to receive and review all civilian and internal ~~police department complaints of~~ allegations of misconduct by members of the police department. To the greatest extent provided by law, the chief of police shall provide the board of police commissions timely updates of any review, investigation, or disposition of allegations of misconduct, and the board of police commissioners shall have authority to ask for additional information from the chief of police and access to any and all documents or other evidence relied upon by the chief of police in reviewing allegations of misconduct. After receiving notice of disposition relating to the review of alleged misconduct by the chief of police, the ~~The~~ board of police commissioners shall have the authority to independently investigate any complaint of alleged police misconduct upon a vote of \_\_\_% of its commissioners.”*

*Motion by Councilor Traverse, without objection.*

*Final Resolution: Motion Passes*

Councilor Carpenter inquired whether subpoena authority would mean the Commission would have to subpoena the BPD to receive records or whether that authority would extend to other individuals outside the Department. The draft charter language should be amended to include a section on this.

Councilor Carpenter asked what types of information or materials would be prohibited by law to be disclosed to the Commission. Attorney Diamond responded that ongoing criminal investigations and their materials are protected by the court. In addition, family court materials or other information about a juvenile are protected. Attorney Diamond also added that non-disclosure agreements can solve some of these issues.

Councilor Traverse said that both councilors Hightower and Bergman were interested in having the vote threshold to start an independent investigation be a simple majority. Councilor Shannon suggested placing in a two-thirds vote as a placeholder until there is further discussion at a subsequent meeting. All councilors present acknowledged the intent to return to this section at a subsequent meeting.

*Motion to change the draft charter language of 184(d) to be:*

*“...~~the~~ ~~The~~ board of police commissioners shall have the authority to independently investigate any complaint of alleged police misconduct upon a vote of two-thirds of its commissioners.”*

*Motion by Councilor Traverse, without objection.*

*Final Resolution: Motion Passes*

Councilor Doherty asked Attorney Diamond for clarification on the enforcement mechanism for subpoenas from city Commissions. Attorney Diamond responded that the city may want to include a provision that states that subpoenas can be enforced in Superior Court. This would be similar to civil investigative demands being enforced through Title 9. Councilor Doherty continued that he would like to know if a city charter can make someone answerable to a Superior Court judge. Attorney Diamond believes that is the case given that the charter goes through the legislature and, in essence, the legislature grants the city such authority through its charter.

Councilor Traverse suggested highlighting and noting for continued review the following draft language that could potentially be added to section 184(d): “In connection therewith, the board of police commissioners shall have the power to subpoena witnesses and documents and to administer the oath to such witnesses.”

Councilors Traverse and Carpenter brought up the issue of providing adequate hearings for officers facing potential discipline. Councilor Traverse clarified that an officer facing termination, demotion, or suspension would receive a hearing either after the Chief, after the Commission, or after the placeholder impasse board decide on such discipline so there would only be one hearing for that officer rather than multiple.

Councilor Traverse started a discussion on what this placeholder ‘human resources panel’ would be and when it would be used. He continued, should any impasse between the Chief and the Commission regarding discipline go to this placeholder panel? Councilor Doherty said that, given the existing complexity, every impasse between the two should go to this panel. Councilor Doherty said that if the two sides are at such an impasse then it would be serious enough to warrant going to this placeholder panel.

Romeo Von Hermann: I think it important to have citizen members on this new independent panel and they should be appointed by the Council rather than the Mayor.

Councilor Carpenter added that part of the reason for expanding the Commission is to ensure there is diversity on the Commission to begin with. In addition, the Mayor has influence and power through the Chief in this regard. She added that this panel will not be meeting very often.

Councilor Shannon said that the Commission is appointed by the Council and it seems appropriate for the Mayor to appoint these new panelists. At the state level, these kind of panels are professionals appointed by the governor and do not require a messy political process. Councilor Shannon strongly urged having these panelists be mayoral appointees that are removed from the political processes that are with the Council. Councilor Shannon added she would remove the Council confirmation.

Councilor Traverse responded by saying he was not comfortable removing the Council confirmation clause. Councilor Carpenter agreed that having Council confirmation of mayoral appointees seems appropriate.

Councilor Traverse asked whether there should be professional background requirements for this new panel. Councilor Shannon figured individuals with policing, HR, or legal backgrounds would all be important. Councilor Doherty said having one individual with policing experience, one with HR experience, and one general citizen would be ideal.

*Motion to change the draft charter language of section 184(e) to be:*

*“~~As the result of an investigation set forth in subsection (d) above, t~~The board of police commissioners may recommend discipline to the chief of police. The chief of police may accept the recommendation subject to the notice and hearing provisions in Article 62, section 190(a) or reject the recommendation. In the event the chief of police rejects the recommendation, the board of police commissioners upon a % vote may request that the independent a human resources panel shall resolve the impasse, subject to the notice and hearing provisions set forth in in Article 62, section 190(a) and the right of appeal set forth in Article 62, section 190(b). This human resources*

*panel shall consist of three (3) persons appointed by the mayor and confirmed by the city council. Each panel member shall serve for staggered three (3) year terms.”*

*Motion by Councilor Traverse, without objection.*

*Final Resolution: Motion Passes*

Councilors Traverse and Carpenter agreed that they should clean up the current draft and distribute to the union, the Chief, and any other stakeholders.

## **5.0 Adjournment**

*Motion to adjourn.*

*Motion by Councilor Traverse, without objection*

*Yes: Unanimous*

The meeting was adjourned at 7:53 PM.

DRAFT