



**Monday, November 27, 2023, 5:30 PM, Bushor Conference Room 1st Floor, City Hall  
OR REMOTELY via ZOOM**

**When: Nov 27, 2023 05:30 PM Eastern Time (US and Canada)  
Topic: Joint Committee on Police Oversight Meeting**

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## **1. Agenda**

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**Subject**

**1.1. Motion to amend/adopt agenda**

Meeting

November 27, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, November 27, 2023, 5:30 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category

1. Agenda

Department

Type

Recommended Action

## 2. Adopt Draft Minutes from Nov. 13

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<b>Subject</b>	<b>2.1. Adopt Draft Minutes from Nov. 13</b>
Meeting	November 27, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, November 27, 2023, 5:30 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	2. Adopt Draft Minutes from Nov. 13
Department	City Attorney
Type	
Recommended Action	

## 3. Public Forum

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<b>Subject</b>	<b>3.1. Verbal Comments</b>
Meeting	November 27, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, November 27, 2023, 5:30 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. Public Forum
Department	Council and Board
Type	

## 4. Councilor Discussion and Review of Draft Charter Changes

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<b>Subject</b>	<b>4.1. Councilor Discussion and Review of Draft Charter Changes</b>
Meeting	November 27, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, November 27, 2023, 5:30 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Councilor Discussion and Review of Draft Charter Changes
Department	Council and Board
Type	
Recommended Action	

## 5. Adjournment

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<b>Subject</b>	<b>5.1. Motion to adjourn</b>
Meeting	November 27, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, November 27, 2023, 5:30 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	5. Adjournment
Department	Council and Board
Type	
Recommended Action	



# 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

## ARTICLE 62. POLICE DEPARTMENT

### 183 Board of police commissioners; composition; terms.

The board of police commissioners shall consist of seven (7) legal voters of said city, to be appointed by the city council with mayor presiding to serve for three (3) years and until their successors are appointed and qualified.

(Act No. M-18, § 2, approved 3-1-16)

### 184 Same-powers and duties.

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

(b) The board of police commissioners shall have such authority and responsibility relating to the management of the police department, its services and facilities, as may be delegated from time to time by resolution of the city council. Said board shall notify the mayor and the chief administrative officer, in writing, of any and all changes, modifications or additions to the rules and regulations of the department.

(c) Without limitation to the foregoing, the board of police commissioners and the chief of police may propose rules and regulations for the government of the entire police force in a manner not inconsistent with those established by the city council. Adoption of such proposed rules and regulations requires joint approval by the board of police commissioners and the chief of police. In the event joint approval is not provided by the board of police commissioners and the chief of police, either party may bring forward to the city council the proposed rule or regulation for the city council's consideration.

(d) The board of police commissioners shall have the authority to receive and review all civilian and internal police department complaints of alleged police misconduct. The board of police commissions shall have the authority to independently investigate any complaint of alleged police misconduct upon a vote of [ ] % of its commissioners.

(e) As the result of an investigation set forth in subsection (d) above, 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, a human resources panel shall resolve the impasse, subject to the notice and hearing provisions set forth 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.

**Commented [1]:** Should there be an additional provision to provide subpoena authority upon a finding of "probable cause" or "reasonable basis" to believe the officer has engaged in some level of misconduct.

**Commented [2]:** An alternative or additional basis could limit such independent investigations to allegations of misconduct involving high level matters, use of force, allegations of discrimination, etc.

## ARTICLE 63. CHIEF OF POLICE AND CAPTAIN

### 185 Officers of police force designated.

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

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

## ARTICLE 65. REMOVAL OR SUSPENSION

### 190 Chief may remove member for cause; hearing.

(a) Whenever it shall appear to the chief that any member of said force has become incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the chief by a responsible person against such member, the chief may investigate and, after appropriate notice an hearing, dismiss such member from the force, order a reduction in rank, or suspend the member without pay for a specified time period in excess of 14 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the chief's notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the charges being considered. In connection therewith, the chief shall have the power to subpoena witnesses and to administer the oath to such witnesses. The board of police commissioners shall hear any appeal filed in a timely manner with respect to such actions of the police chief. The time of filing an appeal and the nature of the appellate process shall be as determined by such board of regulation. Following its consideration of any such appeal, the board may affirm, modify, or vacate the decision made by the police chief.

(b) The city council's human resources committee shall hear any appeal filed in a timely manner with respect to discipline issued by the chief of police in subsection (a) above or the human resources panel set forth Article 62, section 184(e). The time of filing an appeal and the nature of the appellate process shall be determined by the human resources committee. Following its consideration of such appeal the human resources committee may affirm, modify, or vacate the decision made by the police chief or the human resources panel.

**Commented [3]:** An alternative here is the human resources panel referenced in section 184 above.

(b)(c) Whenever it shall appear to the mayor that the chief has become incompetent, inefficient, or incapable from any cause, or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the mayor by a responsible person, the mayor may suspend the chief from duty pending a hearing thereon by the city council. The city council shall forth with notify the chief of the charges preferred by them, or of the complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made,

shall give the chief reasonable notice of the same, not less than 48 hours, and the city council shall have the power to subpoena witnesses and to administer the oath to such witnesses.

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

~~(d)~~(e) The chief may, without notice or hearing for any infraction, violation, or disobedience of any of the rules and regulations of the police department that may seem to the chief sufficient, suspend from duty without pay any member of the police force for a period not to exceed 14 days.

## ARTICLE 62. POLICE DEPARTMENT

### 183 Board of police commissioners; composition; terms.

The board of police commissioners shall consist of ~~ninseventeen~~ (97) legal voters and should represent the diverse nature of said city's constituents, including those from historically marginalized communities, to be appointed by the city council with mayor presiding to serve for three (3) years and until their successors are appointed and qualified.

(Act No. M-18, § 2, approved 3-1-16)

### 184 Same-powers and duties.

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

(b) The board of police commissioners shall have such authority and responsibility relating to the management, auditing, or monitoring of the police department, its services and facilities, as may be delegated from time to time by ~~resolution the ordinances and orders~~ of the city council. Said board shall notify the mayor and the chief administrative officer, in writing, of any and all changes, modifications or additions to the rules and regulations of the department.

(c) Without limitation to the foregoing, the board of police commissioners and the chief of police may propose rules and regulations for the government of the entire police department in a manner not inconsistent with those established by the city council. Adoption of such proposed rules and regulations requires joint approval by the board of police commissioners and the chief of police. In the event joint approval is not provided by the board of police commissioners and the chief of police, either party may bring forward to the city council the proposed rule or regulation for the city council's consideration.

(d) The board of police commissioners shall have the authority to receive and review all civilian and internal allegations of misconduct by members of the police department. To the greatest extent permitted by law, the chief of police shall provide the board of police commissioners timely updates of any review, investigation, or disposition of alleged misconduct, and the board shall have the ability to request additional information from the

chief of police and access to 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 board of police commissioners shall have the authority to independently investigate any allegation of misconduct by members of the police department upon a **[2/3] OR [majority]** vote. **[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.]**

(e) 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 commissions may, upon a **[2/3] OR [majority]** vote, request that an independent panel 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 independent panel shall consist of three (3) persons appointed by **[the mayor] OR [the mayor and confirmed by the city council] OR [the city council with mayor presiding]**. Each panel member shall serve for staggered three (3) year terms. **[Members of the independent panel shall include at least one person with expertise in law enforcement, at least one person with expertise in human resources or labor and employment law, and one member from the general public.]**

## ARTICLE 63. CHIEF OF POLICE AND CAPTAIN

### 185 Officers of police ~~forced~~department designated.

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

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

## ARTICLE 65. REMOVAL OR SUSPENSION

### 190 Chief may remove member for cause; hearing.

(a) Whenever it shall appear to the chief that any member of said ~~forced~~department has become incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the chief by a responsible person against such member, the chief may investigate and, after appropriate notice and hearing, dismiss such member from the ~~forced~~department, order a reduction in rank, or suspend the member without pay for a specified time period in excess of 14 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the chief's notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the charges being considered. In connection therewith, the chief shall have the power to subpoena ~~documents and~~ witnesses and to administer the oath to such witnesses. ~~The board of police commissioners shall hear any appeal filed in a timely manner with respect to such actions of the police chief. The time of filing an appeal and the nature of the appellate process shall be as determined by such board of regulation. Following its consideration of any such appeal, the board may affirm, modify, or vacate the decision made by the police chief.~~

(b) The **[city council shall assign responsibility to a standing committee of at least 3 city councilors]** to hear any appeal filed in a timely manner with respect to discipline issued by the chief of police in subsection (a) above or the independent panel set forth Article 62, section 184(e). The time of filing an appeal and the nature of the appellate process shall be determined by the city council. Following its consideration of such appeal the appellate committee may affirm, modify, or vacate the decision made by the police chief or the independent panel.

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

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

(d)(e) The chief may, without notice or hearing for any infraction, violation, or disobedience of any of the rules and regulations of the police department that may seem to the chief sufficient, suspend from duty without pay any member of the police ~~forcedepartment~~ for a period not to exceed 14 days.