

# ORDINANCE and CHARTER CHANGE JOINT COMMITTEE

Monday, November 27, 2023

Bushor Conference Room, 1<sup>st</sup> Floor City Hall or Remote via Zoom

## DRAFT MINUTES

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

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

**Others in Attendance:** Romeo Von Hermann, Melo Grant, Sharon Bushor, Dave Maher, Sital Dulal, Whitney Hodges, Daniel Pecor, Jane Knodell, Ted Wimpey

Meeting called to order at 5:38 PM.

### 1.0 Agenda

#### Motion to adopt/amend agenda

*Motion to Adopt the Draft Agenda.*

*Motion by Councilor Doherty, Seconded by Councilor Carpenter*

*Final Resolution: Motion Passes*

*Yes: Unanimous*

### 2.0 Adopt the Draft Minutes from November 13

*Motion to Adopt Minutes as is.*

*Motion by Councilor Doherty, Seconded by Councilor Carpenter*

*Final Resolution: Motion Passes*

*Yes: Councilors Doherty, Carpenter, and Shannon*

*Abstain: Councilors Bergman and Hightower*

### 3.0 Public Forum

Sharon Bushor: I sent a question to Councilor Bergman late. Has the Police Commission had a chance to see the proposed draft language? I remember that they felt, as volunteers, taking on additional work would be taxing. I think that having the sitting body give some feedback would be important. I was hoping the charter language would suggest expertise for the HR panel that would be appointed by the Mayor and confirmed by the Council.

Melo Grant: The issue of redacted documents came up last meeting. There was a comment that it could have been a redaction for juvenile's name. That was not the case in the documents I was referencing. It was so heavily redacted that the documents were useless and gave me grave concern that there was something that was trying to be covered up.

Romeo Von Hermann: I want to echo Sharon Bushor's concerns. I also want to emphasize having the Police Commission continue their work and not relying heavily on the HR Committee.

#### **4.0 Councilor Discussion and Review of Draft Charter Change Language**

*Attorney Sturtevant shared the working document from November 13. This document is available in the CivicClerk agenda packet.*

Attorney Diamond brought up a potential issue of timing with regards to disposition and potential Loudermill hearings. It would be awkward to have two separate dispositions between the Chief and the Commission and two potential Loudermill hearings. Councilor Carpenter responded that the Commission should be informed of those issues before the Chief comes to a disposition.

Councilor Bergman suggested adding a notice period between when the Chief has come to a decision and when the Commission has to decide on their course of action.

Councilor Shannon asked about outreach to both the Police Commission and the police union (BPOA). Councilor Shannon said that she spoke with Police Commissioners and they were not aware of the current direction of the draft charter change language.

Councilor Shannon added that, in speaking with current commissioners, that the Commission wants additional help in reviewing materials received from the BPD rather than conducting their own investigations. Commissioners have said they do not feel qualified to do so.

Councilor Hightower disagreed and said one of the primary focuses of these charter changes is to establish independent investigatory authority. She continued that the staffing issue will be resolved in ordinance so that the Commission has sufficient support. She was also concerned with having professional requirements for the three individuals on the new panel. Instead of establishing a separate body, the Police Commission should have the ability to overrule the Chief with a super majority.

Jordan Redell (Mayor's Chief of Staff) said that the Mayor envisions that this new body would be on standby and would only meet when there is an impasse between the Chief and Commission. Professional expertise would be necessary since they would not be interacting regularly with BPD given they would not meet very often.

Councilor Hightower reiterated her disagreement with having a new panel as currently described.

Jordan Redell said that the Mayor believes expertise is necessary when the decision could override the Chief of Police. The Mayor wants it to be a high bar to override the Chief's decision. The rationale being that the Chief is the primary person in charge of discipline for Burlington's officers.

Jordan Redell shared the Mayor's thoughts on the current iteration of the draft charter language. First, the Mayor is opposed to increasing the Commission size from seven to nine. Larger boards are less cohesive and require more administrative support. Second, the Mayor would like complaints about the Chief themselves to be referred to the Mayor and have it be clear that the Commission would not have authority to discipline the Chief. Third, there should be guardrails on the timeframe for how long the Commission has to render a disciplinary recommendation or investigate misconduct. Fourth, the Mayor thinks any independent investigation by the Commission should be done by a qualified investigator that is approved by the City Attorney. Fifth, the Mayor believes there should be a clear timeline that states that the Commission will give their recommendation to the Chief and the Chief will be the one to finalize the disposition after a potential recommendation from the Commission. A written memo from the Mayor's Office stating as much is forthcoming.

Councilor Hightower said that the vote to initiate an independent investigation in Section 184(d) should be a simple majority. Councilor Carpenter said that the Chief would have already presented evidence to the Commission and it seems like having a higher threshold of two-thirds is appropriate. Councilor Doherty agreed with Councilor Carpenter on having a two-third majority given the expense and impact of having a second investigation for something the Chief has already had investigated. Councilor Traverse also believes two-thirds is an appropriate threshold to balance civilian oversight and the rights of officers. Councilor Shannon favored a two-thirds majority as well. Councilor Bergman favored a simple majority as with a seven person Commission it would have to be a 5-2 majority for two-thirds versus a 4-3 simple majority.

*Motion to change the draft charter language of Section 184(d) to require a two-thirds majority of the Commission to initiate an investigation.*

*Final Resolution: Motion Passes*

*Yes: Councilors Traverse, Doherty, Carpenter, and Shannon*

*No: Councilors Bergman and Hightower*

*Motion to change the draft charter language of Section 184(d) to require a simple majority of the Commission to initiate an investigation.*

*Final Resolution: Motion Fails*

*Yes: Councilors Bergman and Hightower*

*No: Councilors Traverse, Doherty, Carpenter, and Shannon*

Councilor Shannon questioned the validity of allowing an investigation after the Chief has concluded their investigation and included Commission input. Councilor Shannon was also concerned about giving subpoena authority to a commission without standards for service, particularly because the Commission could subpoena victims.

Councilor Doherty said that the subpoena power of the legislature has limitations in statute. Many would presumably plead the fifth. Attorney Diamond said there are statutes around civil investigative demands for the AG's office. We could add more language here or not.

Councilor Traverse said that he always assumed investigations would be performed by an outside professional rather than the commissioners themselves. The investigator would be the one using the subpoena power to that goal. Councilor Bergman said there should be some additional language around subpoena power to make the process clear for everyone involved.

Councilor Shannon was uncomfortable with the subpoena authority given that many people cannot afford an attorney and not understand the process. She reiterated that giving the Commission authority to compel testimony after the police department has already finished its investigation is not appropriate. If this included then there should be guardrails so as to not victimize members of the public.

*Motion to change the draft charter language of Section 184(d) paragraph 2 to include the language "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."*

*Final Resolution: Motion Passes*

*Yes: Councilors Bergman, Traverse, Carpenter, and Hightower*

*No: Councilors Doherty and Shannon*

Councilor Doherty would like to revisit this language in the future and is uncomfortable with the current language around subpoena power as currently drafted. He believes there should be more detail on the process. Councilor Bergman asked that Attorney Diamond draft some language around this subpoena power issue.

*Motion to change the draft charter language of Section 184(e) to require a two-thirds majority (as opposed to a simple majority) of the Commission to request that an independent panel resolve an impasse between the Chief and the Police Commission.*

*Final Resolution: Motion Passes*

*Yes: Councilors Traverse, Carpenter, Doherty, and Shannon*

*No: Councilors Bergman and Hightower*

Councilor Hightower suggested leaving the question of expertise on this new independent panel alone for the time being and simply saying an apolitical panel will be appointed to deal with an impasse. Councilor Carpenter was concerned about the timing of having this panel get together to decide on a pending personnel issue.

Attorney Diamond raised the issue that an independent panel, as the last step in a process, would have to have the ability to craft a novel decision after having a Loudermill hearing for the employee. Attorney Diamond continued that a Loudermill hearing provides an opportunity for an accused employee to influence the decision about their employment. The employee would get to submit testimony or evidence themselves. The awkward part is that a Loudermill would probably take place before this new panel meets.

Councilor Shannon believes there should be professional expertise on the panel, but there is room for what expertise that would be. Her concern is that professional discipline requires professional decision makers.

Councilor Traverse offered having a list of criteria that could be met for appointment to the new panel, such as HR, union, management, or law enforcement expertise.

Jordan Redell reiterated that the Mayor feels strongly about maintaining the expertise requirements for the new panel and pointed to the success of the Church Street Marketplace Commission that has similar relevant requirements. The Mayor would also likely have a hard time supporting having these requirements in ordinance rather than charter.

Councilor Traverse offered that, given the many levels of appeals that this process can go through, it might be easier to leave the appeal decision to the Mayor rather than create a new three person panel.

Councilor Bergman said, as a point of information, that the Church Street Marketplace Commission requires two members to be owners or managers of businesses on the marketplace and another to reside in the downtown improve district. He also said that there are professional requirements for some members of other boards.

*Motion to change the draft charter language of Section 184(e) to read that the Mayor shall appoint the members of the new panel.*

*Final Resolution: Motion Passes*

*Yes: Councilors Traverse, Carpenter, Doherty, and Shannon*

*No: Councilors Bergman and Hightower*

*Motion to change the draft charter language of Section 184(e) to reflect that “At least two of the members of the new panel shall have experience in law enforcement, human resources, labor and employment law, or similar experience, and one member from the general public.”*

*Final Resolution: Motion Passes*

*Motion by Councilor Bergman, without objection.*

*Motion to strike in its entirety the draft charter language of Section 190(b) pending follow up from the Mayor’s Office and the Chief of Police and further discussion at a subsequent Joint Committee meeting.*

*Final Resolution: Motion Passes*

*Motion by Councilor Bergman, without objection.*

*The next Joint Committee meeting will be held at on 12/4 at 7:00PM in Bushor Conference Room or Remote.*

## **5.0 Adjournment**

*Motion to adjourn.*

*Motion by Councilor Bergman, without objection*

*Yes: Unanimous*

The meeting was adjourned at 8:31 PM.