



**Monday, December 4, 2023, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR
REMOTELY via ZOOM**

**When: Dec 4, 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

December 4, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, December 4, 2023, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category

1. Agenda

Department

Type

Recommended Action

2. Adopt Draft Minutes from November 27

Subject	2.1. Adopt Draft Minutes from November 27
Meeting	December 4, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, December 4, 2023, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	2. Adopt Draft Minutes from November 27
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Verbal Comments
Meeting	December 4, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, December 4, 2023, 7:00 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

Subject	4.1. Councilor Discussion and Review of Draft Charter Changes
Meeting	December 4, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, December 4, 2023, 7:00 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

Subject	5.1. Motion to adjourn
Meeting	December 4, 2023 - Joint Committee on Police Oversight Meeting Agenda - Monday, December 4, 2023, 7:00 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 27, 2023

Bushor Conference Room, 1st 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.

ARTICLE 62. POLICE DEPARTMENT

183 Board of police commissioners; composition; terms.

The board of police commissioners shall consist of nine (9) 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 department and shall fix the qualifications of applicants for positions and service on said 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 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 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 proposed 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 the proposed disposition relating to the review of alleged misconduct by the chief of police, the board of police commissioners shall have the authority to:

(i). recommend an alternative disposition to the chief of police within a time established by ordinance; or

Commented [A1]: The Mayor recommends keeping that the number of commissioners at 7, the current level.

Commented [A2]: The Mayor recommends that this authority not extend to matters involving the Chief of Police. Per section 190, the Mayor has the authority and discretion, subject to the City Council's oversight, to discipline and remove the Chief.

(ii) independently investigate any allegation of misconduct by members of the police department upon a 2/3 majority vote. Such investigation shall be commenced and completed within a time established by ordinance. Upon the conclusion of such an investigation, the police commission may make a recommendation per subsection (i).

(e) Upon receiving a recommendation by the board of police commissioners in subsection (d), 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 chief of police shall immediately the notify police commission. Upon receiving notice of the rejection, the board of police commissions may, upon a 2/3 majority vote, request that an independent panel decide the disposition of the matter, subject to the notice and hearing provisions set forth in in Article 62, section 190(a).

This independent panel shall consist of three (3) persons appointed by the mayor. Each panel member shall serve for staggered three (3) year terms. Members of the independent panel shall include at least two persons with experience in law enforcement, human resources or labor and employment law, or other similar experience, and one member from the general public.

(f) In connection with an independent investigation provided in subsection (d), the board of police commissioners shall commission a qualified investigator to perform the investigation. Upon a majority vote of the board of police commissioners, the investigator may issue a subpoena to compel the production of documents or witnesses to provide testimony under oath. The investigator will be authorized to administer the oath to such witnesses. Such a subpoena will be subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b.

Commented [A3]: The Mayor recommends that the commissioning or hiring of a qualified investigator be approved by the City Attorney.

ARTICLE 63. CHIEF OF POLICE AND CAPTAIN

185 Officers of police department designated.

(a) The direction and control of the entire police 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 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 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. Such a subpoena will be subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b. 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 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 department 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 ~~ninseveen~~ (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 proposed 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 the proposed disposition relating to the review of alleged misconduct by the chief of police, the board of police commissioners shall have the authority to:~~

~~(i) recommend an alternative disposition to the chief of police within a time established by ordinance; or~~

Commented [A1]: The Mayor recommends keeping that the number of commissioners at 7, the current level.

Commented [A2]: The Mayor recommends that this authority not extend to matters involving the Chief of Police. Per section 190, the Mayor has the authority and discretion, subject to the City Council's oversight, to discipline and remove the Chief.

(ii) independently investigate any allegation of misconduct by members of the police department upon a 2/3 majority vote. Such investigation shall be commenced and completed within a time established by ordinance. Upon the conclusion of such an investigation, the police commission may make a recommendation per subsection (i).

(e) Upon receiving a recommendation by the board of police commissioners in subsection (d), The board of police commissioners may recommend discipline to the chief of police. ~~t~~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 chief of police shall immediately the notify police commission. Upon receiving notice of the rejection, tthe board of police commissions may, upon a 2/3 majority vote, request that an independent panel decide the disposition of the matter, 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. Each panel member shall serve for ~~staggered three (3) year terms. Members of the independent panel shall include at least two persons with experience in law enforcement, human resources or labor and employment law, or other similar experience, and one member from the general public.~~

(f) In connection with an independent investigation provided in subsection (d), the board of police commissioners shall commission a qualified investigator to perform the investigation. Upon a majority vote of the board of police commissioners, the investigator may issue a subpoena to compel the production of documents or witnesses to provide testimony under oath. The investigator will be authorized to administer the oath to such witnesses. Such a subpoena will be subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b.

Commented [A3]: The Mayor recommends that the commissioning or hiring of a qualified investigator be approved by the City Attorney.

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 ~~forcedepartment~~ 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 ~~forcedepartment~~, 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. Such a subpoena will be subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b. ~~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 ~~forcedepartment~~, 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.



Office of Mayor Miro Weinberger

To: Charter Change and Ordinance Joint Committee
From: Mayor Miro Weinberger
Date: December 3, 2023
Re: Police Oversight Charter Change

I am writing this memo as a follow up to input Chief of Staff Jordan Redell has made throughout your process and to the comments I made at the November 20 City Council meeting.

From my perspective there are three critical goals we must achieve if we are going to act on a new charter change and send it to voters:

- 1) **Increase public trust in our police oversight system.** Burlingtonians rightly expect our police officers to be held to high standards. As a city, we have made significant progress, especially since 2015, strengthening the Police Commission to be a body that helps ensure that we do this. I, Chief Murad, the City Council, and the Police Commission have all committed to more of this hard and important work.

Since early 2020, I have consistently supported a change to the Burlington City Charter that codifies our current practice of referring all citizen complaints to the Police Commission and establishes a procedure to reconcile disagreements between the Police Chief and the Police Commission about disciplinary matters.

I am hopeful that codification and refinement of the system we have created would improve public trust in our police oversight system and confidence that our department is meeting the high standards we require.

- 2) **Create guardrails to ensure procedural justice and fairness for officers.** As I have said since the beginning of this process and during past debates on the issue of police oversight, if we are going to change the charter to codify a new and strengthened system of police oversight, we also need to learn from our recent experiences under the new policies of the Police Commission and **build in guard rails that ensure procedural justice and fairness for officers working under this evolved police oversight system.**
- 3) **Create a system that is both functional and feasible to properly administer.** Administration of this new system should not overburden the already under-resourced police department, whose primary responsibility is to ensure public safety, or a city administration that also has limited resources and significant other responsibilities.

If we are going to put a charter change in front of the voters again at the height of a public safety crisis, when we cannot afford to lose any more officers and when the department and administration is

committing all of its capacity to addressing serious public safety challenges, it is essential that the charter change address all three of the goals.

In support of these goals, I request that the following issues be addressed or improved in the current Charter Change draft:

Commission size and member qualifications

- I oppose increasing the size of the Police Commission from seven to nine commissioners. Already, it has proven difficult to recruit community members to generate competitive and diverse pools of applicants interested in serving on the Commission, and the proposed charter and ordinance changes will increase their duties and workload.

Large committees are difficult to serve on and to administer, such as when the need arises to schedule a special or emergency session. Further, the current proposal creates a second body for the purpose of adjudications and those new members will also be fielded from the community and have a certain minimum professional qualifications. Thus, I do not believe a substantial increase in membership to the Police Commission is either feasible or supports the functional administration of their work.

- Because the proposed charter language gives significant new authorities and responsibilities to the Commission, at least half of the Commission should be required to have legal, judicial, HR, senior management or law enforcement experience. There is precedent for this type of board member qualifications-requirement both in our charter – both the Church Street Marketplace Commission and Development Review Board – and among the very few other community boards in the country that have actual disciplinary authority (as opposed to advisory authority only).

Commission review of Police Chief conduct

- I feel very strongly that the Charter should be clear that the Commission has no authority to investigate or discipline the Chief of Police. Complaints about the Chief received or generated by the Commission should be referred to the Mayor. The Police Chief is a mayoral appointment that, currently, can only be disciplined or removed by the Mayor (per the City Charter and subject to the Council's agreement), and this important mayoral authority and responsibility should not be eroded by this prospective charter change.

Commission role in officer discipline

- The Charter should make clear the sequencing of when the Commission should make a recommendation to the Chief on discipline. I believe the Chief should be the lead actor in the investigator process charged with taking input from the Commission before rendering a decision, and then issuing a dispensation.
- The Charter should articulate guardrails on how much time the Police Commission has to consider and render a disciplinary recommendation or independently investigate misconduct after receiving a decision from the Chief. The Chief and employees of the department need some predictability and finality in making a disciplinary decision, especially during the period of reduced staffing levels.
- I agree that a 2/3rds supermajority of the Commission should be able to request a separate independent investigation be conducted if they have concerns about a conflict within the Police Department or if they find reason to question the integrity of an internal investigation.

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The Charter should be clear that the separate investigation would be conducted by a qualified, impartial professional investigator or lawyer selected by the City Attorney.

- After hearing from legal professionals during the current process, I do not support the Independent Investigator having subpoena powers, and do not believe that is necessary to achieve the goal of conducting a thorough, separate investigation. Such powers could lead to the Commission subpoenaing civilian witnesses and bystanders that would need costly legal representation to protect themselves from possible incrimination.



CITIZEN COMPLAINTS, SUPERVISOR REVIEWS, ADMINISTRATIVE REVIEWS & INTERNAL INVESTIGATIONS



INTERNAL COMPLAINT

Performance issues or improper conduct observed by coworkers or supervisors; also guided by [DD43 Reporting Corruption](#)

EXTERNAL CITIZEN COMPLAINT

[Anyone can make a complaint](#), to be filed via the [online portal](#), in person, or on paper, or referred by local stakeholders (City Council, Police Commission, etc.)

Does it refer to the wrong Burlington (e.g., Iowa) or the wrong agency or wrong city department? And/or is it clearly mental-health related? And/or is it a crime complaint? And/or is it prima facie false?

NO

YES

Respond if possible; close as "Invalid Complaint."

Is there a use-of-force with Injury? And/or is there reasonable suspicion of a criminal violation? And/or is there a referral to an outside agency such as the Vermont State Police or Attorney General's office?

NO

YES

SUPERVISOR REVIEW

Assigned to a supervisor

Does the supervisor need to notice and formally interview the subject employee(s)? And/or is there a possible violation of [DD03](#) or [DD05](#)?

NO

YES

Complete the SR

ADMINISTRATIVE REVIEW

Assigned to a Lieutenant or DC

Does the misconduct indicate a pattern of behavior? And/or is it likely that there will be a substantial penalty involving suspension or termination?

NO

YES

Complete the AR

INTERNAL AFFAIRS INVESTIGATION

Assigned to a Lieutenant or DC

Complete the BIA.

Refer to Chief of Police for review.

The Chief reviews with H/R, City Attorney, Mayor as necessary. If an incident results in injury to any person or raises significant public concerns, the [Mayoral Executive Order of September 2020](#) applies.

Does the Chief need to interview the subject or afford the subject an opportunity to explain or rebut? Is discipline likely to include suspension or termination?

NO

YES

Loudermill Hearing

From "[Role of the Burlington Police Commission in Reviewing Complaints Against BPD Employees](#)" (August 2020): "For lower- and mid-level complaints, the Chief will provide a verbal or written summary of the complaints and their status **or** disposition in Executive Session. For higher-level complaints, 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 complaint 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 in executive session."

The Chief finalizes the disposition [as per DD40](#) and offers discipline if appropriate. For sworn officers, this is guided by the "Agreement between City of Burlington and the BPOA," specifically §15, and for professional employees it is guided by the City's [Personnel Policy Manual](#).

As per the August 2020 "[Role of the Burlington Police Commission in Reviewing Complaints Against BPD Employees](#)" agreement, the Police Commission may disagree with the Chief's determination and refer that disagreement to the Mayor.

The Chief follows [Act 56 of 2017](#) and, if applicable, refers to the [Vermont Criminal Justice Council](#).

The subject employee may grieve and appeal the Chief's decision to the Police Commission, as per [City Charter 24 App. V.S.A. ch. 3, § 190](#).

If the subject employee is an officer, he/she may grieve and appeal the Police Commission's decision to arbitration, in accordance with the Agreement between City of Burlington and the BPOA §16.7(C).