

ORDINANCE and CHARTER CHANGE JOINT COMMITTEE

Monday, December 4, 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) (arrived at 9:00PM), 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 (Chief of Police)

Others in Attendance: Joseph Corro, Mary Cox, Andy Vota, Carolyn Hanson, Sharon Bushor, Jane Knodell, Nancy Westbrook, Michele Asch

Meeting called to order at 7:05 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 27

Motion to Adopt Minutes as is.

Motion by Councilor Carpenter, Seconded by Councilor Shannon

Final Resolution: Motion Passes

Yes: Unanimous

3.0 Public Forum

Joseph Corro: I am the President of the Burlington Police Officers' Association (BPOA). BPOA sees no reason to increase the number of commissioners to nine as per the changes in Section 183. In Section 184(a), the BPOA does not like how vague the new changes are. It should be clearer on what types of information the Chief would be furnishing rather than just saying "all information." The BPOA has some issues with Section 184(e). Other professionals, like doctors, lawyers, or nurses, have boards that are comprised of either current or former professionals in their respective fields. The BPOA wants oversight that is professional and understands policing and the current commissioner training does not provide that. With more authority comes a greater need for professional standards and expertise for those doing the oversight. Continuing with Section 184(e), I like the concept of the independent panel, I just think the qualifications for the panel are too vague and should account for things like length of time in a field, different positions held, and the like. Personally, I would prefer if someone in this role had a variety of policing experiences (patrol, detective, supervisory) and have trainings and expertise relevant to a department the size of BPD. In addition, we would also suggest having a five person panel rather

than three. In Section 185(a), we do not support the language added regarding the Mayor's authority and do not see it as fair given that the mayor is subject to political pressure. I am not certain on what the subpoena power's as draft would entail and thus we are concerned about it. The outcome could be that it pushes officers out the door. There are a number of things in this document that officers would be uncomfortable with. Our fear is that new hires may choose other departments because they fear they won't be treated fairly. From my personal experience, I know that an internal investigation is extremely stressful on top of the regular stress of police work. Having multiple levels of investigations would add more time and the continued possibility of a decision being reversed or changed. In short, we want a robust, but fair, oversight system that does not add additional stress.

Jon Murad (Chief of Police): There is some room in the current charter for change, at least when it comes to the issue of disciplining the Chief of Police themselves. I would recommend having the Mayor be in charge of discipline for the Chief. A large issue throughout the draft charter changes is the absence of a distinction between discipline and substantive discipline. For substantive discipline the Chief does not act alone and consults with the City Attorney's Office, HR, and Mayor's Office. This is important since the draft language would notify the Commission of all discipline rather than just substantive discipline as it is laid out in the collective bargaining agreement (CBA, union agreement). The CBA recognizes that some issues can be resolved quickly without a special meeting of the Commission to lighten stress on officers for minor issues. The CBA says that the Commission shall receive all recommendations of discipline or the dispositions of smaller issues. I agree with the BPOA on Section 185 that it is important to keep politics out of the department and Section 191 actually restricts certain political involvement by officers or the Chief.

Mary Cox (Police Commissioner): I personally concur with most everything the corporal and the Chief said. The Commission has not had a chance to discuss the draft language in a meeting yet. I personally think we need some cleanup of a few policies but that a charter change is not necessary.

Councilor Shannon followed up with Mary Cox and asked her to elaborate on what the Commission has agreed on.

Mary Cox: We wanted a complaint monitor to take over the work that Jack Keefe has been doing. This wouldn't be an investigator, but rather administrative staff for the Commission. We also discussed removing the appellate role for the Commission. There was no consensus on exactly what we should do on that issue, however. Currently, we listen to the Chief's recommendation, but also have an open mind when it comes to acting as an appellate body for officers. I did personally like the idea of having an independent body to investigate and really dig into more important incidents. I agree with the corporal that the independent body should have experienced law enforcement officers and be five members instead of three. Another thought was having the body be ad-hoc and appointed on a case-by-case basis depending on the context of the incident, such as with issues of racial justice, disability rights, mental health, etc.

Councilor Carpenter said that the system does seem to be working currently, but this charter change is to ensure that, with a different Chief, different mayor, and different Commission, the system continues to work well. A large part of the Committee's goal was to establish in charter the right to information that is currently functioning.

Sharon Bushor: I am concerned that we have not heard from many of the Police Commissioners. I have heard from some that they do not know why the Joint Committee is making the changes that it is. As Councilor Carpenter said, we want to formalize the current system and maybe make some changes. I fear the current changes adds more friction between the Commission and the Department. On the issue of disciplining the Chief, I think the Mayor should seek the input of other elected officials. I am not saying that the decision should go before the Council, but rather the Mayor should seek guidance from and inform the Council of their intent.

Jane Knodell: As a process recommendation, please make sure every document you work on in a meeting is available to the public. I hope the Joint Committee will listen to the BPOA, the Chief, and the Commission. It would be damaging to have investigations into discipline linger longer than necessary.

4.0 Councilor Discussion and Review of Draft Charter Change Language

Councilor Traverse laid out the background for the Joint Committee's inception. The community control board referendum vote last March failed and the Council decided to take up the issue as there still was a lot of public support behind it. There has been a push in the last few years to memorialize in either charter or ordinance the parts of police oversight that have been working and make changes as necessary. Many of our initial meetings for the Joint Committee were for information gathering. We alerted many groups in our community as well as the municipal unions of our meeting schedule and encouraged input.

Attorney Diamond shared the document "Draft Charter Language from 11-27-23 Meeting (Jrd Edits)". This document and its 'clean' version are available in the CivicClerk agenda packet.

Councilor Traverse asked Commissioner Cox for her opinion on the draft change from a seven to a nine member commission.

Mary Cox responded that the Commission really wants administrative or staff support. The Commission lost its staff support and now the commissioners are doing all of the administrative work such as recording minutes. Staff could monitor the complaints and other tasks that Commissioner Keefe is currently doing as a volunteer. She said that the Commission does not need more volunteer Commissioners, but rather needs City staff support.

Jordan Redell (Mayor's Chief of Staff) said that the Mayor's Office did not realize the Commission did not have staff support and that she would resolve it.

Councilor Doherty said he supports changing the draft language back to a seven member Commission. Councilor Shannon agreed that a seven member Commission would be better. Councilor Carpenter supported keeping the draft language at nine members to include more historically marginalized groups as well as those with expertise. Councilor Traverse supported a seven member body.

Motion to change the draft charter language of Section 183 to restore the original seven member Commission size.

Final Resolution: Motion Passes

Yes: Councilors Traverse, Doherty, and Shannon

No: Councilor Carpenter

Councilor Carpenter brought up that an ordinance change in the future should include that the Commission has to have administrative staff support.

Jordan Redell said that the memo from the Mayor's Office (*available on the CivicClerk agenda packet*) lays out that Mayor wants at least half of the Commission to have law enforcement, HR, or legal experience. The Mayor relied on the precedent set in the charter language for the Church Street Marketplace Commission.

Councilor Carpenter said that the Marketplace Commission only has requirements for four of the nine members. The Development Review Board has recommended expertise, but not required.

Jordan Redell said that the new draft authority given to the Commission, such the ability to start their own investigation, requires a higher degree of expertise.

Councilor Traverse did not support having higher qualifications for the Commission given the higher level panel having requirements. Councilor Shannon was fine not having particular qualifications for Commissioners so long as they did not have subpoena or investigatory powers. Councilor Doherty agreed with Councilor Shannon.

Councilor Shannon asked Joseph Corro of the BPOA if he had any thoughts on the draft changes made in Section 184(a). He did not have any further thoughts on that section at the time.

Chief Murad clarified on the draft changes made to 184(a) that the materials the BPD shares with the City Council are not the same as those shared with the Commission. Things like the identity of a victim or the identification of a juvenile would be protected by law and not given to the Commission. He continued that even materials not protected by law, such as the name of a suspect in an unresolved, cold case, would not be shared with the Commission even though it would be legally more ambiguous.

Councilor Carpenter said that the draft change to Section 184(a) was not necessarily about individual cases, but rather about allowing the Council to have information regarding the operations generally at BPD.

Jordan Redell asked Attorney Sturtevant if a City Council resolution could compel the BPD to release information to the Council. Attorney Sturtevant responded that it would depend on the information and might be protected by law.

Councilor Shannon suggested getting further feedback from the union and the Chief regarding the draft changes to Section 184(a) before making any further changes. The Committee remained open to hearing additional changes to this section.

Councilor Traverse quickly summarized Sections 183(b) and (c) and how an impasse on directive changes would ultimately go to the City Council to decide.

Mary Cox said the current system for changing police directives works well and is very collaborative. Changes to that current system could disrupt the collaboration between the Commission, the Chief, and union officers.

Joseph Corro said any changes made in the charter regarding the Commission or BPD would end having to require a renegotiation of the collective bargaining agreement (CBA).

Chief Murad clarified that under the current system that the Commission is informed of lower-level dispositions by the Chief and not all dispositions go before the Commission before they are issued. This is to limit the amount of time that officers are under investigation for lower-level issues.

Motion to change the draft charter language of Section 184 (d) to remove the word 'proposed' before any instance of the word disposition.

Final Resolution: Motion Passes

Yes: Unanimous.

Attorney Diamond advised that the word 'proposed' was added to disposition in Section 184 (d) as a matter of continuity with other sections of the charter, particularly for higher-level incidents.

Chief Murad added that the CBA already requires the Chief to inform the Commission of higher-level allegations of misconduct and must relay the facts of the issue to the Commission before disposition can take place. This is not the case for lower-level allegations.

Motion to change the draft charter language of Section 184 (d)'s first paragraph to be:

"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. For higher level complaints of alleged misconduct, the complaint may not be disposed until the board of police commissioners is notified of the proposed disposition."

Final Resolution: Motion Passes

Yes: Unanimous.

Motion to change the draft charter language of Section 184 (d)'s second paragraph to be:

"After receiving notice of the recommended or actual disposition relating to the review of alleged misconduct by the chief of police, the board of police commissioners shall have the authority to:"

Final Resolution: Motion Passes

Yes: Unanimous.

Councilor Traverse said that, since some stakeholders are hesitant to give the Commission the power to conduct an independent investigation, that a different option would be to allow the Commission to send the materials to the new oversight body and allow them to decide on opening an investigation.

Councilor Shannon was concerned that allowing a different body, either the Commission or the new oversight body, would lengthen the time that officers are under investigation. She proposed having the state police oversight board conduct that part of oversight.

Jordan Redell said that there has been an instance already where the Commission was given permission to hire an outside attorney to review investigation materials from the Police Department. That attorney did not conduct an investigation, but reviewed already-acquired materials for the Commission.

Councilor Bergman joined at 9:00 PM.

Mary Cox said that, in her view, the Commission is focused on systemic change in the Department rather than individual officers. She said that the ad-hoc committee created during the Grenon incident discussion worked well, and that the discussions should not fall only on the Commission.

Councilor Doherty recommended striking the language around having the Commission conduct independent investigations. Councilor Shannon agreed.

Councilor Bergman disagreed. He said that the independent investigation power is essential to oversight at the local level. If the Commission does not wish to use this power, then they do not have to.

Councilor Carpenter agreed with Councilor Bergman that the Commission should have the investigation authority. The Commission would not have to utilize the power, but it would have the power to hire an outside attorney or staff to get more information.

Councilor Traverse recommended removing Section 184 (f) from the draft language which gave subpoena power. Instead the Commission would have the power to hire an outside attorney to conduct an investigation, pending approval from the City Attorney.

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

(ii) "independently investigate any allegation of misconduct by members of the police department upon a 2/3 majority vote. Such investigation or review shall be conducted by an independent investigator hired by the board of police commissioners, and approved by the City Attorney's Office, 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)."

Final Resolution: Motion Passes

Yes: Councilors Traverse, Carpenter, and Bergman.

No: Councilors Shannon and Doherty.

Motion to keep the subpoena power as laid out in the draft Section 184(f):

Final Resolution: Motion Fails

Yes: Councilor Bergman

No: Councilors Traverse, Carpenter, Doherty, and Shannon

Councilor Doherty supported having an ad-hoc committee take the place of the proposed new oversight body as laid out in Section 184(e). Councilor Bergman agreed that having an ad-hoc committee appointed on a case by case basis makes sense for this new body.

All councilors agreed to keep the size of the ad-hoc committee at three members.

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

“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 on a case-by-case basis by the mayor. 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.”

Final Resolution: Motion Passes

Yes: Unanimous

Councilor Traverse said that the language added to Section 185(a) is from the Mayor’s Office and codifies that the Chief of Police is subject to the Mayor just like any other Department Head.

Chief Murad said that the added language is important because it gives the Mayor authority over the Chief and removes the possibility of the Chief having the final say on matters without the Mayor’s approval.

Jordan Redell said that the Mayor became concerned about the charter language around the Chief of Police in 2018 when it was shown that the Mayor did not have charter authority over the Chief on police matters.

Joseph Corro said that the Mayor always had the power to remove the Chief as a last resort. He was concerned about allowing a politician to have authority over police discipline as is outlined in the draft language. He was concerned about how public opinion or public pressure may influence the Mayor’s decisions in this regard.

Councilor Shannon said that she would like to remove the draft language added to this section. She would also like to get input from the Commission on this issue. All other members of the Committee favored keeping the language as drafted.

Councilor Traverse moved on to Section 190. He explained that in Section 190(a) the draft language removes the Commission as the appellate body for police discipline. The Committee agreed that if this language is removed then the discipline appeals process would align with either the CBA or the Personnel Policy.

Jordan Redell pointed to a grammatical issue in Section 184(d). This was changed to read:

“After receiving notice from the chief of police of the proposed disposition relating to the review of alleged misconduct, the board of police commissioners shall have the authority to:”

Jordan Redell added that Section 184 or 190 should include explicit language that states the Commission does not have the power to suspend or remove the chief of police. Attorney Diamond said he would draft language to this effect. All councilors were in agreement with this explicit inclusion.

Motion to refer the draft charter change language back to the full City Council for public hearing.

Final Resolution: Motion Passes

Yes: Unanimous

5.0 Adjournment

Motion to adjourn.

Motion by Councilor Bergman, without objection

Yes: Unanimous

The meeting was adjourned at 10:22 PM.