

**Resolution Relating to**

POLICE OVERSIGHT AND ACCOUNTABILITY  
AUTHORITIES TO POLICE COMMISSION TO ALTER  
THE POLICE DISCIPLINARY SYSTEM

**RESOLUTION 7.09**

Sponsor(s): Public Safety Committee

Introduced: 10/18/21

Referred to: \_\_\_\_\_

\_\_\_\_\_  
Action: amended; adopted

Date: 10/18/21

Signed by Mayor: 11/23/21

**CITY OF BURLINGTON**

In the year Two Thousand Twenty-one.....

Resolved by the City Council of the City of Burlington, as follows:

1 That WHEREAS, on June 29, 2020, the City Council adopted a resolution entitled “Racial Justice  
2 Through Economic and Criminal Justice” that included a request that the Charter Change Committee propose  
3 charter amendments that “authorize the Police Commission to approve by simple majority any disciplinary  
4 decision, including a decision of non-discipline, the Police Chief wishes to implement in a use-of-force case,  
5 with such approval including the right to impose a new and different discipline as the Commission deems  
6 appropriate;”<sup>1</sup> and

7 WHEREAS, on Sept. 8, 2020, the City Council adopted a resolution entitled “Protesters and Public  
8 Safety” that acknowledged “the need to change current policies regarding discipline and oversight of our  
9 police” and requested “that the Charter Change Committee review options for who makes and reviews police  
10 disciplinary decisions and report on the various options to the full Council in October;”<sup>2</sup> and

11 WHEREAS, the Charter Change Committee, along with many residents and local activist groups,  
12 brought forward a civilian oversight charter change for inclusion on the March 2021 Town Meeting Day  
13 ballot; and

14 WHEREAS, pursuant to the city charter, the Mayor vetoed the Council’s 7-5 vote to place that charter  
15 change proposal for an Independent Community Control Board and Investigative Office to deal with police  
16 discipline and policy, and that veto was sustained; and

17 WHEREAS, the City Council and the Administration, agree that the current charter’s provisions on  
18 police discipline should be amended to better address complaints about police misconduct, disciplinary  
19 decisions and the accountability of police officers, as well as Police Department policies and officers’ actions,  
20 thereby helping to achieve the common goal of delivering the most professional and effective public safety  
21 services possible; and

22 WHEREAS, the National Association of Civilian Oversight of Law Enforcement (“NACOLE”) -  
23 website outlines “What are the steps a community should take in establishing effective police oversight” by  
24 encouraging having ‘a core group of citizens who are sufficiently concerned about the issue...who seek out

\* \* \* \* \*

ORIGINAL

**DISTRIBUTION:**

I hereby certify that this resolution has been sent to the following department(s) on

RESOLUTION RELATING TO

.....  
.....  
.....

Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. .... Page .....

**Attest:**

\* \* \* \* \*

POLICE OVERSIGHT AND ACCOUNTABILITY AUTHORITIES TO  
POLICE COMMISSION TO ALTER THE POLICE DISCIPLINARY  
SYSTEM

25 training, support and resources prior to establishing a formal planning or advisory committee,” and goes on to  
26 recommend and support that communities “fram[e] the public discussion and invit[e] broad community input  
27 emphasizing that the purpose is improving trust between police and the community by ensuring public  
28 confidence in the agency through accountability and transparency” with the “end goal...to deliver the most  
29 professional and effective police services possible in the community”<sup>3</sup>; and

30 WHEREAS, the National Association of Civilian Oversight of Law Enforcement (“NACOLE”) –  
31 endorsed Guidebook states that is important to “establish a planning or advisory committee composed of  
32 elected officials, legal advisors, police officials, police union representatives, and community advocates ‘to  
33 effectively work together on “sources of resistance and issues of contention and begin to address the concerns  
34 and neutralize the resistance”<sup>4</sup>; and

35 WHEREAS, research shows that effective civilian oversight can have important benefits:

- 36 • where citizens who interact with the police experience a safe space for expressing concerns,  
37 feeling validated by the independent oversight, and holding the police department accountable  
38 for officers’ behavior; and
- 39 • where police officers, leadership, and union representatives have found that oversight improves  
40 their relationship with the community, strengthens the quality of the department’s  
41 investigations of alleged misconduct, reassures the public that the process is fair and thorough,  
42 and improves officer conduct; and
- 43 • where the community is safer because there is greater accountability and transparency<sup>5</sup>; and

44 WHEREAS, further, for an oversight model to be truly effective, it must be proactive, independent,  
45 community driven, empowered, transparent, individualized, an investment in our community, and an iterative  
46 process<sup>6</sup>; and

47 WHEREAS, the City Council and Administration agree that there is a need to revise the current  
48 civilian oversight model and to build community trust, which must be addressed with both expediency and an  
49 authentic collaborative effort--with all stakeholders at the table as colleagues in the planning and  
50 implementation process; and

51 WHEREAS, it was NACOLE’s recommendation that the Police Commission be more community  
52 engaged in interacting with and educating the public on policing and public safety; and

53 WHEREAS, the City Council, together with the Administration, recognizing that a charter change will  
54 take time, from being placed on a ballot, to the legislative and administrative processes in Montpelier, as well

\* \* \* \* \*

ORIGINAL

**DISTRIBUTION:**

I hereby certify that this resolution has been sent to the following department(s) on

RESOLUTION RELATING TO

.....  
.....  
.....

**Adopted by the City Council**

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. .... Page .....

**Attest:**

\* \* \* \* \*

55 as the unknown of what a charter change will look like at the end of this process, and that responsive action is  
56 needed now, may delegate to the Police Commission, certain authority about management of the Police  
57 Department through its authority in the City Charter, Article 62, Section 184—Same-powers and duties, which  
58 states:

59       The city council shall make rules and regulations for the government of the entire police  
60 force . . . the board of police commissioners shall have such authority and responsibility  
61 relating to the management of the police department, its services, and facilities, as may be  
62 delegated from time to time by resolution of the city council.

63       BE IT FURTHER RESOLVED that the City Council requests that the City Attorney’s Office, as one  
64 of its top priorities, draft by November 2021 an ordinance for a first reading that would delegate, to the extent  
65 possible consistent within legal constraints, authority to manage complaints about police conduct to the Police  
66 Commission to include language:

- 67       • codifying that the Commission will review all civilian complaints of alleged police misconduct. The  
68 Commission will determine which complaints are low-, medium-, and high-level. In conducting  
69 reviews, the Commission will have full and unfettered access to the Department’s documentation of  
70 the incident triggering the complaint, including officer affidavits, all witness statements, other  
71 investigative documents, and all videos. This information shall be forthcoming to the Commission  
72 within 15 days of a formal complaint being filed; and
- 73       • giving the Commission the authority to retain independent legal counsel to support its review of  
74 complaints; and
- 75       • giving the Commission the authority to request an investigation into an incident by the Chief of Police  
76 or another appropriate authority and requiring that a report of any investigative findings be returned to  
77 the Commission; and
- 78       • authorizing the Commission to have the ability to review incidents, determine if they will investigate a  
79 complaint irrespective of the Chief or Department, and give input and make recommendations on  
80 investigation results and remedies, including proposed discipline for officers. This would include  
81 giving the Commission the authority to hire an independent investigator to conduct or review  
82 allegations of serious conduct or harm; and
- 83       • giving the Commission the authority to issue a recommendation of remedy for a complaint, including a  
84 recommendation to the Police Chief on discipline for an officer; requiring the Chief to consult with the

\* \* \* \* \*

**DISTRIBUTION:**

I hereby certify that this resolution has been sent to the following department(s) on

ORIGINAL

RESOLUTION RELATING TO

.....  
.....  
.....

Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. .... Page .....

**Attest:**

\* \* \* \* \*

POLICE OVERSIGHT AND ACCOUNTABILITY AUTHORITIES TO  
POLICE COMMISSION TO ALTER THE POLICE DISCIPLINARY  
SYSTEM

85 Commission and, in the absence of agreement, issue a written memorandum detailing the reasons for  
86 which the Chief disagrees with the Commission’s recommendation of remedy for a complaint within  
87 15 days. Further resolution would then be led by the Mayor, the City Council’s Public Safety  
88 Committee, and an independent third body, who will take testimony from both the Police Commission  
89 and the Chief or other representative of the Department, in advance of delivering a written final  
90 determination regarding the dispute; and

- 91 • tasking the Commission to issue an annual report on complaints, discipline, and other activities,  
92 including the Commission’s recommendations as well as the final disposition of complaints; and
- 93 • the ordinance should contain language encouraging and supporting the ability of Burlington Police  
94 Commission to speak publicly to citizen complaints in accordance with personnel policies and  
95 confidentiality requirements; and

96 BE IT FURTHER RESOLVED that the City Council requests that said ordinance be referred to the  
97 Ordinance Committee as its top priority for review and public input and be returned to the full Council for a  
98 second reading no later than Monday, December 20, 2021; and

99 BE IT FURTHER RESOLVED that the Administration will introduce to the FY22 budget an  
100 amendment authorizing up to \$25,000 from the unassigned fund balance for the Police Commission for the  
101 Commission’s legal costs and to conduct independent investigations, if the Commission deems them  
102 necessary; and

103 BE IT FURTHER RESOLVED that the City Council authorizes the Police Commission to initiate  
104 audits, reviews, and evaluations of policies, directives, or data; in regard to discipline, racial disparities, or  
105 other Commission priorities.

106 **BE IT FURTHER RESOLVED that the City Council tasks the Charter Change Committee to**  
107 **hold meetings, allowing for community and stakeholder input, with the question of moving disciplinary**  
108 **authority from the Chief of Police to a body that is independent from the Burlington Police Department,**  
109 **and that may include the Burlington Police Commission, and asks that language to do so be referred**  
110 **back to the Council in time to allow the Council to place such a Charter change consideration on the**  
111 **March 2022 ballot, if the Council so chooses**

112

113 <sup>1</sup>Resolution: Racial Justice through Economic and Criminal Justice, June 29, 2020, signed by the Mayor, July 13, 2020

114 <sup>2</sup>Resolution: Protesters and Public Safety, September 8, 2020, signed by the Mayor, September 21, 2020

115 <sup>3</sup>NACOLE website: <https://www.nacole.org>

\* \* \* \* \*

ORIGINAL

**DISTRIBUTION:**

I hereby certify that this resolution has been sent to the following department(s) on

**RESOLUTION RELATING TO**

.....  
.....  
.....

**Adopted by the City Council**

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

**Attest:**

Vol. .... Page .....

\* \* \* \* \*



POLICE OVERSIGHT AND ACCOUNTABILITY AUTHORITIES TO  
POLICE COMMISSION TO ALTER THE POLICE DISCIPLINARY  
SYSTEM

- 116 <sup>4</sup> NACOLE, Brian Buchner, Liana Perez, Cameron McElhiney, Eduardo I. Diaz, ed. Guidebook for the Implementation of New and Revitalized  
117 Police Oversight, 2016, pg 12  
118 <sup>5</sup>Peter Finn, "Citizen Review of Police: Approaches and Implementation," National Institute of Justice, March  
119 2001. <http://www.ncjrs.gov/pdffiles1/nij/184436.pdf>  
120 <sup>6</sup>NACOLE website: <https://www.nacole.org/>  
121  
122  
123 *Amended; adopted LO 101821*

\* \* \* \* \*

ORIGINAL

**DISTRIBUTION:**

I hereby certify that this resolution has been sent to the following department(s) on

Thomas Musinski, City Attorney's Office  
Charter Change Committee

**RESOLUTION RELATING TO**

Police Oversight And Accountability Authorities To Police Commission To Alter The Police Disciplinary System

*As Amended*  
**Adopted by the City Council**  
October 18, 2021  
*[Signature]* Clerk

Approved November 20, 2021  
*[Signature]* Mayor  
Vol. .... Page .....

*[Signature]*  
Attest  
Lori Olberg  
Licensing, Voting and Records Coordinator

\* \* \* \* \*



## Office of Mayor Miro Weinberger

### MEMORANDUM

To: City Council  
From: Mayor Miro Weinberger  
Date: November 15, 2021  
Re: Signing statement regarding October 18, 2021 Resolution 7.09 Police Oversight and Accountability

---

The Council's October 18 Resolution: Police Oversight and Accountability, Authorities to Police Commission to Alter the Police Disciplinary System was a long and complex resolution with a number of unusual provisions and significant implications for our work together to strengthen public safety in this community. This statement 1) explains my decision to sign the resolution and 2) communicates my process requests moving forward. With committee meetings beginning this week, I respectfully ask Councilors to consider these requests if you share my interest in reaching a consensus, unlike the last time a Police Oversight resolution was considered by the Council last March.

#### **Explanation of my approval of this resolution:**

After careful review, I signed the October 18, 2021 Police Oversight and Accountability resolution because it is generally consistent with some of my long-held beliefs about our police oversight system, specifically:

- **Our Charter should be amended to add checks and balances to the isolated authority over discipline that the Chief of Police wields in our current system.** I believe it is critical that the Chief continue to have a leadership role in the disciplinary process but believe the current insulation of the Chief's disciplinary decisions from any other authorities is a byproduct of a long-gone era and not consistent with the public's expectations of police departments today. I believe my position is consistent with language starting on line 107 of the resolution that charges the Charter Change committee with engaging the public "with the question of moving disciplinary authority from the Chief of Police to a body that is independent from the Burlington Police Department" because, again, I do support shifting some of the near-absolute authority from the Chief. However, the Chief remains the day-to-day administrator of the police department, and I cannot support any resolution that removes so much of his authority that the Chief no longer has a leadership role in discipline or the executive tools necessary to effectively manage the department.
- **We should fully explore additional ways to appropriately strengthen our existing Police Commission's role in the disciplinary process.** Charter changes are a slow and uncertain process. I am supportive of the directional concept in the resolution that we should explore what further changes, beyond the significant strengthening of the Commission that has already been completed since 2015, can lawfully and effectively be implemented at this time. While we



may be nearing the limits of what can be done within the constraints of the Charter already, I do not object to reviewing this further.

My signing of this resolution should not be interpreted as the Administration's endorsement of all of the possible transfers of authority to the Police Commission as listed in the resolution (beginning on line 67). The resolution expressly acknowledges that "legal constraints" may limit the ability of the Council to make these delegations without a Charter Change. I am withholding my endorsement of any of these delegations until that legal review is completed and considered. Specifically, it is important to recognize that, per the charter, the Police Commission is part of the City of Burlington Corporate, and thus there are structural and significant legal limitations to the independence this resolution supports.

**Process from here for a new ordinance and Charter Change regarding police oversight:**

The process that Councilors pursued for the Charter Change that reached my desk last December was problematic in that the Police Department's command staff, and the Burlington Police Officer's Association, were provided no opportunity to give input into the drafting of the language, and the City Attorney's professional advice and concerns were largely ignored. The Police Chiefs, the police union, and the City Attorney are key stakeholders in the policies under consideration in this resolution and should be heard from throughout the deliberative process going forward for both the resolution's proposed new ordinance as well as the Charter Change it contemplates.

