



## Office of Mayor Miro Weinberger

### MEMORANDUM

TO: City Council  
FROM: Mayor Miro Weinberger  
DATE: December 7, 2020  
RE: Police Oversight Charter Change

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At tonight's meeting, the Council will deliberate on a proposal to change our City Charter to include a new model of oversight for the Burlington Police Department. This is an important discussion that I welcome. I am committed to forging a new consensus on policing in Burlington that has support from both the community and the police department, and achieving that will require structural reforms to our oversight models and processes for administering officer discipline.

#### **Background: Recent changes have been made to disciplinary process**

Our Administration has taken recent actions related to disciplinary decisions. First, during Chief Morrison's tenure as Acting Chief she codified into policy the practice begun several years ago that the Chief shall consult with the Police Commission in advance of major disciplinary decisions. Second, this fall, I [issued an Executive Order](#) requiring the Chief of Police to formally present to the Mayor and other senior officials all disciplinary decisions for use of force incidents that result in injury to an individual or raise significant public concern before the Chief issues the decision.

#### **The Administration supports changing charter to check sole disciplinary authority of Chief**

These recent steps are not enough. Members of the public have made clear that they want to see greater accountability from its elected officials for police disciplinary decisions, and I agree. Elected officials and Police Commissioners, who are ultimately held accountable for police conduct, should have the opportunity to meaningfully weigh in when problematic police conduct occurs.

Further, as I have stated repeatedly over the last year, I find the near-absolute authority over discipline granted to the Chief by our Charter to be problematic and a departure from our typical practice of having democratic checks and balances. In order to address this issue we will need a Charter Change.

#### **Charter Change proposed by Councilor Freeman lacks current consensus**

While Councilor Freeman and I have disagreed on numerous policing issues, I respect her deep commitment to public safety policy and can see that she and her colleagues have worked very hard and diligently on her proposed new language.

Unfortunately, it is clear from discussions at the Charter Change Committee and the Joint Committee meeting last week, and from yesterday's letter that we received from the Police Commission that there remain significant concerns and unanswered questions about the current proposal. The Administration shares many of the concerns expressed by the Commission, and I believe some Councilors have concerns as well.

While perhaps Councilor Freeman's proposal could reach the votes in needs for Council passage, it clearly currently lacks the consensus that would benefit its chances of ultimate success if it were to go on the Town Meeting Day ballot, reach the State Legislature, and get to the desk of the Governor. If the Charter Change does not pass all of those tests, we will have set back the opportunity to make changes to the problematic status quo for a full year.

**Administration alternative offered in interest of securing consensus by key deadline**

I have called a Special Meeting of the City Council for Monday, December 14 to give us an additional week for the City Council to initiate the Charter Change process by warning a public hearing on specific Charter Change language (to be clear: I have taken this step because we know the Charter Change For Building Decarbonization needs an additional week of work, and a meeting on that date gives the police discipline charter change additional time as well). If this step does not happen at the December 14 meeting we will lose the opportunity to initiate the charter change process for another year.

In the interest of moving us towards a Charter Change on police discipline that could garner broad consensus, the Administration is offering the attached Charter Change language. Our proposal would give the Police Commission and the Mayor the ability to have input on disciplinary decisions, and gives the Commission significant additional investigatory powers beyond what they have today, as well as ultimate decision making authority in disciplinary cases there this is strong Commission disagreement with the Chief. The proposed changes would:

- Formalize that the Police Commission will receive and review all civilian complaints of alleged police misconduct, and formalizes a role for the Police Commission in the discipline of Police Officers by requiring the Police Chief to consult with the Commission in advance of administering discipline.
- Task the Police Commission to issue a quarterly report on complaints, discipline, and other activities.
- Gives the Mayor the authority to review and give input on investigation results or proposed discipline.
- Gives the Police Commission the authority to hire an independent investigator to conduct or review allegations into alleged serious misconduct.
- Gives the Police Commission the authority to hold a hearing, make findings, and issue a final decision if a supermajority of the Commission continues to disagree with the Chief's findings and recommended discipline.

I would welcome and fully engage in a focused process between Councilors, stakeholders, and the Administration over the next week to review this proposal alongside the Councilor Freeman's proposal in an attempt to find common ground by next Monday's deadline.

## DRAFT CHARTER CHANGES FROM ADMINISTRATION

December 3, 2020

### ARTICLE 62. POLICE DEPARTMENT

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

The board of police commissioners shall consist of seven (7) legal voters of said city, to be appointed by the city council with mayor presiding to serve for three (3) years and until their successors are appointed and qualified. The composition of the commission should represent the diversity of Burlington's residents, particularly including members of groups who historically have been marginalized.

(Act No. M-18, § 2, approved 3-1-16)

#### **184 Same-powers and duties.**

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

(b) The board of police commissioners shall receive and review all civilian complaints of alleged police misconduct, may review any other complaints against police officers that it deems in the public interest, and shall have a role in the discipline of officers as in section 189 of this Charter. The board shall have such other authority and responsibility relating to the management of the police department, its services and facilities, as may be delegated from time to time by resolution of the city council. Said board shall notify the mayor and the chief administrative officer, in writing, of any and all changes, modifications or additions to the rules and regulations of the department and shall issue quarterly reports on complaints, discipline, and other activities.

### ARTICLE 63. CHIEF OF POLICE AND CAPTAIN

#### **185 Officers of police force designated.**

(a) The direction and control of the entire police force, except as herein otherwise provided, shall be vested in a police officer who shall be called the chief of police, and such other ranking police officers as the city council shall authorize, subject to the rules and regulations 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 64. APPOINTMENT OF POLICE OFFICERS**

### **186 Manner of filling vacancies.**

Whenever a vacancy occurs in any other position, the chief may appoint a successor.

(Act No. M-14, § 4, approved 5-19-2004)

### **187 Force to be maintained; selection of members.**

A regular police force for said city shall be maintained in the city. No applicant shall be deemed qualified for employment on said force until he or she has been approved by the chief of police. The process for determining the qualifications of and employing police officers shall fully comply with any criteria established by the board of police commissioners and the city's comprehensive personnel policy manual as the same may be amended from time to time.

(Act No. M-14, § 5, approved 5-19-2004)

### **188 Manner of appointment.**

The chief shall, from time to time, as the needs of the city may require, appoint from the approved applicants. If the name of the applicant has been on the approved list for more than six months, the applicant shall take and pass a new examination by the board of medical examiners before being appointed.

(Act No. M-14, § 6, approved 5-19-2004)

### **189 Members of force to be retained as long as they remain competent.**

The members of said regular police force now serving, or who shall hereafter be appointed thereto, shall, after the expiration of the one-year probationary period above provided, and so long as they shall remain competent, efficient and capable in the performance of their respective duties be retained as such, subject to the rules and regulations adopted under Section [184](#) of this Charter and provided that any member may be removed for cause as hereinafter provided.

## **ARTICLE 65. ~~REMOVAL OR SUSPENSION~~ DISCIPLINE OF POLICE OFFICERS**

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

(a) Whenever it shall appear ~~to the chief~~ that any member of said force has become incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the chief or the board of police commissioners by a responsible person against such member, the chief may investigate and, after appropriate notice and hearing, dismiss such member from the force, order a reduction in rank, ~~or~~ suspend the member without pay for a specified time period ~~in excess of 14 days,~~ or take other appropriate disciplinary action. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the chief's notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the charges being considered. In connection therewith, the chief shall have the power to subpoena

witnesses and to administer the oath to such witnesses. ~~The board of police commissioners shall hear any appeal filed in a timely manner with respect to such actions of the police chief. The time of filing an appeal and the nature of the appellate process shall be as determined by such board of regulation. Following its consideration of any such appeal, the board may affirm, modify, or vacate the decision made by the police chief.~~

(b) Before the chief takes any final action or closes any matter alleging that a police officer has been negligent or derelict in their duty or is guilty of any misconduct, the results of any investigation and any proposed response or discipline must be reviewed with the police commission, which may make recommendations to the chief. In addition, the mayor should have authority to review and give input on any investigation results or proposed response or discipline. In connection with any investigation of officer misconduct, the commission and the mayor should have access to all police department materials related to the investigation including tapes, transcripts, investigator's notes, witness statements, and other documents

(c) The board of police commissioners may hire an independent investigator to conduct or review any investigation into alleged serious misconduct, if by a majority vote it determines an independent investigation warranted. The results of that investigation would be shared with the chief who would provide the board with a proposed response, including any discipline of an officer.

(d) If after providing input to the chief on the department's proposed response in any allegation of serious misconduct and giving the chief a reasonable opportunity to amend the proposal, at least six members of the commission continue to disagree with the chief's proposal, the commission may hold a hearing, make findings, and issue a final decision, which will be considered a final agency action appealable to the Vermont Superior Court. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the 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 board of police commissioners shall have the power to subpoena witnesses and to administer the oath to such witnesses. The hearing will include, at minimum, a right for the accused officer to cross-examine and present witnesses and to be represented by counsel.

(be) 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, the city council shall forth with notify the chief of the charges preferred by them, or of the complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made, shall give the chief reasonable notice of the same, not less than 48 hours, and the city council shall have the power to subpoena witnesses and to administer the oath to such witnesses.

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

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

(Act No. M-14, § 7, approved 5-19-2004)